PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 81

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

FEBRUARY 28, MARCH 7, 14, 21, 22, AND 28, 1979

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CONTENTS

HEARINGS HELD

WITNESSES

ADDITIONAL STATEMENTS

ADDITIONAL MATERIAL

APPENDIXES

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

WEDNESDAY, FEBRUARY 28, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 11:15 a.m., in room 2141, Rayburn House Office Building, the Honorable George E. Danielson presiding.

Present: Representatives Danielson, Moorhead, McClory, Kindness, Mazzoli, Hughes, Harris, and Barnes.

Staff present: William P. Shattuck, counsel; James H. Lauer, assistant counsel; Alan F. Coffey, Jr., Associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 11 o'clock having arrived, the subcommittee will come to order. I apologize to the members of the public who are here for having been 15 minutes late, but I will speak fast and maybe we can make up for it.

This morning the Subcommittee on Administrative Law and Governmental Relations will begin its hearings on the bill H.R. 81 and companion measures, all of which relate to the subject of disclosure of lobbying activities.

In the 94th Congress, the Judiciary Committee reported the bill H.R. 15 on September 1, 1976, and it passed the House on September 29, 1976, after extended consideration and amendments on the floor. It did not pass the Senate.

In the 95th Congress, this subcommittee reported the bill H.R. 8494, which again related to the requirement of disclosure of lobbying activities. That bill was reported to the House of Representatives by the Committee on the Judiciary on March 24, 1978, and was passed by the House on April 26, 1978, after long deliberation and with many amendments. As was the case in the 94th Congress, the lobbying bill passed by the House of Representatives was not passed by the Senate in the 95th Congress.

In this, the 96th Congress, the bill H.R. 81 was introduced by the chairman of our Judiciary Committee, the Honorable Peter Rodino, as principal sponsor and I joined him on the bill. It contains the same language that was contained in H.R. 8495 of the 95th Congress, as that bill was reported to the House by the Committee on the Judiciary.

[A copy of H.R. 81 follows:]

96TH CONGRESS
1ST SESSION

H. R. 81

To regulate lobbying and related activities.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. RODINO (for himself and Mr. DANIELSON) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To regulate lobbying and related activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Disclosure of Lobbying Act of 1979".

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "affiliate" means—

(A) an organization which is associated with another organization through a formal relationship based upon ownership or an agreement (including

a charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

(B) a unit of a particular denomination of a church or of a convention or association of churches; and

(C) a national membership organization and any of its State or local membership organizations or units, a national trade association and any of its State or local trade associations, a national business league and any of its State or local business leagues, a national federation of labor organizations and any of its State or local federations, and a national labor organization and any of its State or local labor organizations;

(2) the term "Comptroller General" means the Comptroller General of the United States;

(3) the term "direct business relationship" means the relationship between an organization and any Federal officer or employee in which—

(A) such Federal officer or employee is a partner in such organization;

(B) such Federal officer or employee is a member of the board of directors or similar governing body of such organization, or is an officer or employee of such organization; or

(C) such organization and such Federal officer or employee each hold a legal or beneficial interest (excluding stock holdings in publicly traded corporations, policies of insurance, and commercially reasonable leases made in the ordinary course of business) in the same business or joint venture, and the value of each such interest exceeds $1,000;

(4) the term "employ" means the utilization of the services of an individual or organization in consideration of the payment of money or other thing of value, but does not include the utilization of the services of a volunteer;

(5) the term "exempt travel expenses" means any sum expended by any organization in payment or reimbursement of the cost of any transportation for any agent, employee, or other person (but not including a Federal officer or employee) engaging in activities described in section 3(a), plus such amount of any sum received by such agent, employee, or other person as a per diem allowance for each such day as is not in

excess of the maximum applicable allowance payable under section 5702(a) of title 5, United States Code, to Federal employees subject to such section;

(6) the term "expenditure" means—

(A) a payment, distribution (other than normal dividends and interest), salary, loan (if made on terms or conditions that are more favorable than those available to the general public), advance, deposit, or gift of money or other thing of value, other than exempt travel expenses, made—

(i) to or for the benefit of a Federal officer or employee;

(ii) for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a), and for costs attributable partly to activities described in section 3(a) where such costs, with reasonable preciseness and ease, may be directly allocated to those activities; or

(iii) for the retention or employment of an individual or organization who makes lobbying communications on behalf of the organization; or

(B) a contract, promise, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparagraph (A);

(7) the term "Federal officer or employee" means—

(A) any Member of the Senate or the House of Representatives, any Delegate to the House of Representatives, and the Resident Commissioner in the House of Representatives;

(B) any officer or employee of the Senate or the House of Representatives or any employee of any Member, committee, or officer of the Congress;

(C) any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code; and

(D) the Comptroller General, Deputy Comptroller General, General Counsel of the United States General Accounting Office, and any officer or employee of the United States General Accounting Office whose compensation is fixed by the Comptroller General in accordance with section 203(i) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 52b);

(8) the term "identification" means—

(A) in the case of an individual, the name, occupation, and business address of the individual and the position held in such business; and

(B) in the case of an organization, the name and address of the organization, the principal place of business of the organization, the nature of its business or activities, and the names of the executive officers and the directors of the organization, regardless of whether such officers or directors are paid;

(9) the term "lobbying communication" means, with respect to a Federal officer or employee described in section 2(7) (A) or (B), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, treaty, nomination, hearing, report, or investigation, and, with respect to a Federal officer or employee described in section 2(7) (C) or (D), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, or treaty which has been transmitted to or introduced in either House of Congress or any report thereon of a committee of Congress, any nomination to be submitted or submitted to the Senate, or

any hearing or investigation being conducted by the Congress or any committee or subcommittee thereof, but does not include—

(A) a communication made at the request of a Federal officer or employee, or submitted for inclusion in a report of a hearing or in the record of public file of a hearing;

(B) a communication made through a speech or address, through a newspaper, book, periodical, or magazine published for distribution to the general public, or through a radio or television transmission, or through a regular publication of an organization published in substantial part for purposes unrelated to engaging in activities described in section 3(a): *Provided*, That this exemption shall not apply to an organization responsible for the purchase of a paid advertisement in a newspaper, magazine, book, periodical, or other publication distributed to the general public, or of a paid radio or television advertisement;

(C) a communication by an individual for a redress of grievances, or to express his personal opinion; or

(D) a communication on any subject directly affecting an organization to (i) a Senator, or to an

individual on his personal staff, if such organization's principal place of business is located in the State represented by such Senator, or (ii) a Member of the House of Representatives, or to an individual on his personal staff, is such organization's principal place of business is located in a county (including a city, city-and-county, parish, and the State of Alaska) within which all or part of such Member's congressional district is located; (10) the term "organization" means—

(A) any corporation (excluding a Government corporation), company, foundation, association, labor organization, firm, partnership, society, joint stock company, organization of State or local elected or appointed officials (excluding any Federal, State, or local unit of government other than a State college or university as described in section 511 (a) (2) (B) of the Internal Revenue Code of 1954, and excluding any Indian tribe, any national or State political party and any organizational unit thereof, and any association comprised solely of Members of Congress or Members of Congress and congressional employees), group of organizations, or group of individuals; and

(B) any agent of a foreign principal as defined in section 1 of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611);

(11) the term "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1; and

(12) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

APPLICABILITY OF ACT

SEC. 3. (a) The provisions of this Act shall apply to—

(1) any organization which makes an expenditure in excess of $2,500 in any quarterly filing period for the retention of an individual or another organization to make lobbying communications, or for the express purpose of preparing or drafting any such lobbying communication; or

(2) any organization which (A) employs at least one individual who, on all or any part of each of thirteen days or more in any quarterly filing period, or at least two individuals each of whom on all or any part of each of seven days or more in any quarterly filing period, makes lobbying communications on behalf of that organization, and (B) makes an expenditure in

excess of $2,500 in such quarterly filing period on making lobbying communications,

except that the provisions of section 4 and section 6 of this Act shall not apply to an affiliate of a registered organization if such affiliate engages in activities described in paragraphs (1) and (2) of this subsection and such activities are reported by the registered organization.

(b) This Act shall not apply to practices or activities regulated by the Federal Election Campaign Act of 1971.

REGISTRATION

SEC. 4. (a) Each organization shall register with the Comptroller General not later than fifteen days after engaging in activities described in section 3(a).

(b) The registration shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization, except that nothing in this paragraph shall be construed to require the disclosure of the identity of the members of an organization.

(2) An identification of any retainee described in section 3(a)(1) and of any employee described in section 3(a)(2).

(c) A registration filed under subsection (a) in any calendar year shall be effective until January 15 of the succeeding calendar year. Each organization required to register under

subsection (a) shall file a new registration under such subsection within fifteen days after the expiration of the previous registration, unless such organization notifies the Comptroller General, under subsection (d), with respect to terminating the registration of the organization.

(d) Any registered organization which determines that it will no longer engage in activities described in section 3(a) shall so notify the Comptroller General. Such organization shall submit with such notification either (1) a final report, containing the information specified in section 6(b), concerning any activities described in section 3(a) which the organization has not previously reported or (2) a statement, pursuant to section 6(a)(2), as the case may be. When the Comptroller General receives such notification and report or statement, the registration of such organization shall cease to be effective.

RECORDS

SEC. 5. (a) Each organization required to be registered and each retainee of such organization shall maintain for each quarterly filing period such records as may be necessary to enable such organization to file the registrations and reports required to be filed under this Act, except that, in those situations where a registered organization elects to report as to the lobbying activities of its affiliates pursuant to section 3(a), such affiliates shall be responsible for maintaining such

records as are necessary to enable the registered organization to fully discharge its reporting obligations as they pertain to such affiliates. The Comptroller General may not by rule or regulation require an organization to maintain or establish records (other than those records normally maintained by the organization) for the purpose of enabling him to determine whether such organization is required to register.

(b) Any officer, director, employee, or retainee of any organization shall provide to such organization such information as may be necessary to enable such organization to comply with the recordkeeping and reporting requirements of this Act. Any organization which shall rely in good faith on the information provided by any such officer, director, employee, or retainee shall be deemed to have complied with subsection (a) with respect to that information.

(c) The records required by subsection (a) shall be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate.

REPORTS

SEC. 6. (a) (1) Each organization which engages in the activities described in section 3(a) during a quarterly filing period shall, not later than thirty days after the last day of such period, file a report concerning such activities with the Comptroller General.

46-350 O - 79 - 2

(2) Each registered organization which does not engage in the activities described in section 3(a) during a quarterly filing period shall file a statement to that effect with the Comptroller General.

(b) Each report required under subsection (a)(1) shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization filing such report.

(2) The total expenditures (excluding salaries other than those reported under paragraph (5) of this subsection) which such organization made with respect to activities described in section 3(a) during such period.

(3) An itemized listing of each expenditure in excess of $35 made to or for the benefit of any Federal officer or employee and an identification of such officer or employee.

(4) A disclosure of those expenditures for any reception, dinner, or other similar event which is paid for, in whole or in part, by the reporting organization and which is held for the benefit of any Federal officer or employee, regardless of the number of persons invited or in attendance, where the total cost of the event exceeds $500.

(5) An identification of any retainee of the organization filing such report and of any employee who makes lobbying communications on all or part of each of seven days or more, and the expenditures made pursuant to such retention or employment, except that in reporting expenditures for the retention or employment of such individuals or organizations, the organization filing such report shall—

(A) allocate, in a manner acceptable to the Comptroller General, and disclose the amount which is paid to the individual or organization retained or employed by the reporting organization and which is attributable to engaging in such activities for the organization filing such report; or

(B) notwithstanding any other provision of law, disclose the total expenditures paid to any individual or organization retained or employed by the organization filing such report.

(6) A description of the issues concerning which the organization filing such report engaged in activities described in section 3(a) and upon which the organization spent a significant amount of its efforts.

(7) Disclosure of each known direct business relationship between the reporting organization and a Federal officer or employee whom such organization has

sought to influence during the quarterly filing period involved.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 7. (a) It shall be the duty of the Comptroller General—

(1) to develop filing, coding, and cross-indexing systems to carry out the purposes of this Act, including (A) a cross-indexing system which, for any retainee described in section 3(a)(1) who is identified in any registration or report filed under this Act, discloses each organization identifying such retainee in any such registration or report, and (B) a cross-indexing system, to be developed in cooperation with the Federal Election Commission, which discloses for any such retainee each identification of such retainee in any report filed under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(2) to make copies of each registration and report filed with him under this Act available for public inspection and copying, commencing as soon as practicable after the date on which the registration or report involved is received, but not later than the end of the fifth working day following such date, and to permit copying of such registration or report by hand or by copying machine or, at the request of any individual or

organization, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; but no information contained in any such registration or report shall be sold or utilized by any individual or organization for the purpose of soliciting contributions or business;

(3) to preserve the originals or accurate reproductions of such registrations and reports for a period of not less than five years from the date on which the registration or report is received;

(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

(5) to make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to permit copying of such information by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of such information upon payment of the cost of making and furnishing such copy; and

(6) to prescribe such rules and regulations and such forms as may be necessary to carry out the provisions of this Act in an effective and efficient manner.

(b) The duties of the Comptroller General described in subsection (a)(6) of this section shall be carried out in conformity with chapter 5 of title 5, United States Code, and any records maintained by the Comptroller General under this Act shall be subject to the provisions of sections 552 and 552a of such chapter.

ENFORCEMENT

SEC. 8. (a) It shall be the duty of the Attorney General to investigate alleged violations of any provision of this Act, or any rule or regulation promulgated in accordance therewith. The Attorney General shall notify the alleged violator of such alleged violation, unless the Attorney General determines that such notice would interfere with the effective enforcement of this Act, and shall make such investigation of such alleged violation as the Attorney General considers appropriate. Any such investigation shall be conducted expeditiously, and with due regard for the rights and privacy of the individual or organization involved.

(b) If the Attorney General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a civil violation of this Act as de-

scribed in section 11(a), he shall endeavor to correct such violation by informal methods of conference or conciliation.

(c) If the informal methods described in subsection (b) fail, the Attorney General may institute a civil action, including an action for a permanent or temporary injunction, restraining order, or any other appropriate relief, in the United States district court for the judicial district in which such individual or organization is found, resides, or transacts business.

(d) If the Attorney General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a criminal violation of this Act as described in section 11(b) or 11(c), the Attorney General may institute criminal proceedings in a United States district court in accordance with the provisions of chapter 211 of title 18, United States Code.

(e) The United States district courts shall have jurisdiction of actions brought under this Act.

(f) In any civil action brought pursuant to subsection (c), the court may award to the prevailing party (other than the United States or an agency or official thereof) reasonable attorney fees and expenses if the court determines that the action was brought without foundation, vexatiously, frivolously, or in bad faith.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 9. The Comptroller General shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out his duties and functions under this Act, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF RULES OR REGULATIONS

SEC. 10. (a) Upon promulgation of any rule or regulation to carry out the provisions of section 4, 5, or 6 under the authority given him in section 7(a)(6) of this Act, the Comptroller General shall transmit notice of such rule or regulation to the Congress. The Comptroller General may place such rule or regulation in effect as proposed at any time after the expiration of ninety calendar days of continuous session after the date on which such notice is transmitted to the Congress unless, before the expiration of such ninety days, either House of the Congress adopts a resolution disapproving such rule or regulation.

(b) For purposes of this section—

(1) continuity of session of the Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety calendar days referred to in subsection (a).

SANCTIONS

SEC. 11. (a) Any individual or organization knowingly violating section 4, 5, or 6 of this Act, or any rule or regulation promulgated in accordance therewith, shall be subject to a civil penalty of not more than $10,000 for each such violation.

(b) Any individual or organization who knowingly and willfully violates section 4, 5, or 6 of this Act, or who, in any statement required to be filed, furnished, or maintained pursuant to this Act, knowingly and willfully makes any false statement of a material fact, omits any material fact required to be disclosed, or omits any material fact necessary to make statements made not misleading, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, for each such violation.

(c) Any individual or organization knowingly and willfully failing to provide or falsifying all or part of any records required to be furnished to an employing or retaining organization in violation of section 5(b) shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(d) Any individual or organization selling or utilizing information contained in any registration or report in violation of section 7(a)(2) of this Act shall be subject to a civil penalty of not more than $10,000.

REPEAL OF THE FEDERAL REGULATION OF LOBBYING ACT

SEC. 12. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof, are repealed.

SEPARABILITY

SEC. 13. If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. There are authorized to be appropriated to carry out this Act $1,600,000 for the fiscal year beginning on October 1, 1980; $1,600,000 for the fiscal year beginning on October 1, 1981; and $1,600,000 for the fiscal year beginning on October 1, 1982.

EFFECTIVE DATES

SEC. 15. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on October 1, 1980.

(b) Sections 4, 5, 6, 8, 11, and 12 shall take effect on the first day of the first calendar quarter be inning after the

date on which the first rules and regulations promulgated to carry out the provisions of sections 4, 5, and 6 take effect, in accordance with section 10.

[The companion bills; H.R. 128 introduced by Mr. Bennett; H.R. 1979 introduced by Mr. Kastenmeier and Mr. Railsback; H.R. 2302 introduced by Mr. Kindness; H.R. 2497 introduced by Mr. Mazzoli and H.R. 2613 introduced by Mr. Young of Florida are set out at page 437 and following.]

Mr. DAINELSON. Our distinguished colleague, the Honorable Tom Railsback of Illinois, has joined with the Honorable Robert Kastenmeier of Wisconsin, in sponsoring another bill in the present Congress, H.R. 1979, which contains the provisions of the bill H.R. 8494 of the 95th Congress as it passed the House of Representatives on April 26, 1978. It will be our pleasure to hear from Mr. Railsback today. I wish to point out that both Mr. Kastenmeier and Mr. Railsback have done outstanding work on this subject in previous Congresses.

In the present 96th Congress, our colleague on this subcommittee, the Honorable Tom Kindness of Ohio, has sponsored another bill, H.R. 2302, which reflects the careful study and interest which he has shown in the subject of lobbying reform. That bill, too, is before us today. I also wish to note the fact that the Honorable Charles Bennett of Florida has again introduced a bill on this subject matter which is H.R. 128. That bill, too, is before us and reflects the continuing interest of Mr. Bennett in this subject matter.

I think one conclusion can be drawn from these comments is that there's no shortage of bills on the subject of lobbying disclosure and that all of the issues have been hashed over and over again and the issues are clearly defined so we will try to do the best we can to meet what is the public need.

We are honored this morning to have with us the Honorable Don Edwards of California, an eminent lawyer in the field of civil and constitutional rights, and, Don, we welcome you.

If you will permit me, I'd like to recognize Mr. Kindness of Ohio for a few comments.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you for yielding, Mr. Edwards. I would just like to comment, a little bit preliminarily, and perhaps as an introduction to some of the thoughts that members like my colleague, Mr. Edwards, would have to offer too. The subject of lobbying disclosure certainly qualifies as old business for this subcommittee. But still it seems to me that it is desirable for us to ask again some very basic questions about this issue.

What is the public need to be served by such legislation? Most lobbying is already a matter of public record. Lobbying activities are frequently scrutinized and analyzed in the news media, in Congress, and elsewhere. The issue is not what the public needs to know. Rather, it is how much does the public really care to know.

What are the abuses we seek to remedy? That's a very basic question that's never been answered. What are the unsavory activities that must be brought to light? Interestingly, our previous hearings, both in 1975 and in in 1977, are virtually devoid of any documentation that widespread abuses exist. Perhaps the Justice Department will be able to provide us with this overdue documentation this morning.

I can't help but suspect that what the proponents of this legislation really seek is an issue; an issue that, in a sense, helps to justify their existence. The zeal for reform, then, is not exactly unselfish. It carries with it the tone of the politically self-righteous, who choose to downplay the constitutional rights of those whose political or economic interests they happen to dislike.

Congress cannot permit this misplaced zealotry to result in an unnecessary, unfair, punitive, or unconstitutional law. We can't burden the universe with detailed paperwork, simply because certain groups want statistics and other "cannon fodder" for their press releases.

One final point—individuals and organizations should not exercise their first amendment rights with the threat of criminal penalties hanging overhead. A good faith attempt to comply with a new lobbying law should not subject an organization to potential harassment or fishing expeditions. Simply put, this subject is not a proper realm for criminal law. I understand that the administration has now come around to this point of view and am anxious to see their specific enforcement language that should be imposed.

While it should be clear that I do not exactly view this legislation as a high national priority—I can still count. Consequently, I look forward to working with the other members of this subcommittee on a reasonable resolution of this difficult problem.

I thank the chairman for yielding the time.

Mr. DANIELSON. Thank you, Mr. Kindness.

In order that we can move ahead, Mr. Kindness, of course, will be our ranking member here present today—I certainly appreciate his comments.

Mr. EDWARDS, would you proceed? I have already introduced you and we are all waiting your words.

TESTIMONY OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. EDWARDS. Thank you, Mr. Chairman, and I will not present my entire statement. I would appreciate having it made a part of the record.

Mr. DANIELSON. Without objection, the statement will be included in the record.

[Complete statement follows:]

STATEMENT SUMMARY OF CONGRESSMAN DON EDWARDS

Lobby reform legislation should only be enacted if the record shows that lobbying activities pose such a threat to our country that the government must monitor and control the constitutionally protected right of freedom of speech and the right to petition the government. Hearings and congressional debate on this issue have not made this essential record.

H.R. 81 wisely excludes disclosure of: (1) an organization's positions on issues, (2) the methods by which an organization arrives at its positions, (3) listings of the organization's major contributors, and (4) descriptions of the organization's indirect lobbying activities (solicitations and grassroots lobbying). Any bill which included these constitutionally dubious provisions would be unacceptable to me. H.R. 81 should be further amended, however, to remove the criminal penalties which would have such a chilling effect on the exercise of free speech. It should also contain a limitation that the group would have to register and report only if the group had paid officers, directors or employees.

California's stringent lobby law has been hardest on small "public interest" lobbyists but easy to comply with for professional, well-funded lobbying firms. We must take care not to repeat this unfortunate California experience.

STATEMENT OF CONGRESSMAN DON EDWARDS

Mr. Chairman, I appreciate being heard today by you and the other distinguished members of the subcommittee. While my personal preference is for a bill with coverage limited to gifts to Members of Congress, I want to make it clear that I have supported lobby bills in the past and hope that should a bill be written by you,

it will not pose so substantial a threat to constitutional rights as to require my opposition.

It is not difficult to understand why Congress has had little success in drafting lobby legislation. The reason, of course, is that any such law runs into the Bill of Rights, particularly the First Amendment's provisions that Congress must make no law abridging freedom of speech or the right to petition the government.

Some great Americans strictly interpreted the First Amendment. Jefferson's view was that government could not interfere until there were "overt acts against peace and good order." Justice Douglas said "the purpose of the Bill of Rights is to keep the government off the backs of the people", and he and Justice Black reiterated that they were "strict constructionists" and that where the Constitution says "Congress shall make no law", that is exactly what our founders intended.

I think all of us who serve here in Congress recognize the very real frustration and resentment of the American people over the growth of government regulations. They feel over-regulated already. It must be recognized that any lobby bill will increase government interference in people's lives. In enacting any lobby bill Congress is certifying that speech and petitioning have reached such a dangerous level that federal law must monitor and control these constitutionally protected rights.

It follows that such a serious undertaking by Congress must be supported by strong proof of the threats to the country. If we plan to give the federal government more power to monitor these rights, it seems clear to me that an explicit record must be made in these hearings.

Mr. Chairman, I must point out respectfully that the record has not been made. During this subcommittee's hearings in 1977 only in the testimony of Common Cause Vice President Fred Wertheimer was there some description of lobbying activities that might be criticized. All of these involved lobbying by large organizations. Mr. Wertheimer did not describe the damage inflicted on our country by this lobbying.

The examples are on pages 131–133 of the hearings. Briefly they are:

GM wrote to GM suppliers urging them to contact Members of Congress to oppose fuel economy legislation.

Two hundred twenty-nine registered oil lobbyists in Washington plus 29 public relations firms representing oil in 1974–75 reported spending only $683,279.

The American Petroleum Institute reported spending only $64,000.

Certain Maritime Associations did not register.

In 1977, automobile companies launched a campaign to delay emission standards.

Presidents of the auto companies and Ralph Nader lobbied on energy but didn't register as lobbyists.

The American Trial Lawyers Association had members send thousands of mailgrams on no-fault insurance. They did not register as lobbyists.

In 1971, ITT executives visited and socialized with White House and Justice people to influence dropping of the anti-trust suit against them. They did not register.

The American Electric Power Company conducted a massive advertising campaign to promote coal development ads in 260 papers at a cost of $3.6 million. AEP was not registered.

American Drug Companies lobbied HEW to reject a plan to use lowest priced drugs and encouraged thousands of druggists to write yet did not register as lobbyists.

Mr. Chairman, I want to make it clear that I am not treating these examples with disrespect. Clearly in some instances there should have been registration and possibly more. However, these few examples offered in the course of the subcommittee's hearings on lobbying reform are not enough to make a compelling case for substantially increased regulation of lobbying activities. I must emphasize that the record should be much more explicit, or otherwise how can this subcommittee possibly write the narrowly drawn legislation that any controls of First Amendments rights require?

I have some specific points which I will describe briefly:

H.R. 8494 as reported favorably by the House Judiciary Committee on March 24, 1978 was a significant improvement over the lobby bill passed by the House in 1976 and this subcommittee's bill.

Four key amendments were adopted by the full Committee. A bill containing any one of these provisions would be unsupportable by me. The four objectionable provisions would have required the disclosure of:

(1) An organization's positions on issues.

(2) The methods by which an organization arrives at its positions.

(3) A list of the organization's major contributors; and

(4) A description of the organization's indirect lobbying activities. (solicitations and grassroots lobbying).

In addition to removing these constitutionally-dubious provisions, the Judiciary Committee raised the thresholds for registration to a more appropriate level, covering private organizations which do significant lobbying and excluding most organizations which conduct infrequent or insignificant lobbying activities.

Mr. Chairman, all of the above described amendments are essential. Even though some of these worrisome provisions have worthy supporters, I trust that none will find its way back into any legislation the subcommittee reports.

H.R. 81 (Mr. Rodino & Mr. Danielson) is identical to H.R. 8494 as approved by the Judiciary Committee on March 24, 1978. It meets minimum constitutional standards but should be amended in several respects:

1. Civil fines and equitable relief should be the remedies under the law. Criminal sanctions must be removed. Criminal penalties will have a chilling effect on those who want to express their views but hear only that they must comply or risk jail.

2. The bill should contain the limitation contained in the House-passed 1976 bill that the group would have to register and report only if the group had "paid officers, directors or employees". An ad hoc coalition of unpaid persons should not qualify as an organization. This is a most important defect in H.R. 81 and should be removed. Should ad hoc coalitions with unpaid officers be included, many such groups would undoubtedly decide not to express their views to Congress if they had to register and report as lobbyists in the same manner as the professional lobbyists.

I am about to conclude, Mr. Chairman, and I appreciate your hearing my deeply-felt concerns. In my home state of California we have had since 1974 a stringent lobby bill. The effect of the act was best summed up by Sacramento lobbyist Allen Tibbetts: "The greatest irony of all is that the 'endangered species' is not the lobbyist per se, but the so-called 'good guy' lobbyist, the ones without the bankroll."

A study by Arthur Lipow, of the Center for Ethics and Social Policy in Berkeley, noted "Indeed it would seem that the greatest burden of the law has fallen on the groups who were most adamant in their support of the law—the so-called 'public interest' lobbyists and the representatives of the various non-profit charitable groups." In referring to the well funded, longstanding lobbyists, the Lipow Report goes on to note that, "Compliance is easiest for those very same groups, especially the professional lobbying firms we were told would somehow be checked by the new law."

Mr. Chairman, we must not repeat the unfortunate California experience. Those supporting this legislation should describe to this subcommittee in detail the evils being perpetrated on American society by unregistered lobbyists. Are they wining and dining Members of Congress? Do they curry favor through parties, hotel rooms, hunting lodges, or liquor? Just what groups are misbehaving? Is it just the professional lobbyists? Are there proponents who see this legislation as a device to put out of business certain lobbyists they don't like?

Then, after the record has been made, the misconduct described, and the dangers appraised, the bill can be drawn carefully and narrowly to meet the problem. That, I respectfully suggest, is the obligation where we are limiting and regulating rights of Americans guaranteed in the Constitution.

Thank you.

Mr. EDWARDS. Thank you. Mr. Chairman, I appreciate being heard today by you and the other distinguished members of this subcommittee. While my personal preference is for a bill limited to gifts to Members of Congress, I want to make it clear that I have supported lobby bills in the past and hope that should a bill be written by you it will not pose so substantial a threat to constitutional rights as to require my opposition. It's not difficult to understand why Congress has had so little success in drafting lobbying legislation. The reason, of course, is that any such law runs into the Bill of Rights, particularly the first amendment provisions that Congress must make no law abridging freedom of speech or the right to petition the government.

Some great Americans strictly interpreted the first amendment. Jefferson's view was that Government could not interfere until there were "overt acts against peace and good order." Justice Douglas said "the purpose of the Bill of Rights is to keep the Government off the backs of the people," and he and Justice Black reiter-

ated that they were "strict constructionists" and that where the Constitution says "Congress shall make no law," that is exactly what our founders had in mind.

I think all of us who serve here in Congress recognize the very real frustration and resentment of the American people over the growth of Government regulations. They feel overregulated already. It must be recognized that any lobby bill will increase Government interference in people's lives. In enacting any lobby bill Congress is certifying that speech and petitioning have reached such a dangerous level that Federal law must monitor and control these constitutionally protected rights.

It follows that such a serious undertaking by Congress must be supported by strong proof of the threats to the country. If we plan to give the Federal Government more power to monitor these rights, it seems clear to me that an explicit record must be made in these hearings.

Mr. Chairman, I agree with my colleague from Ohio, Mr. Kindness, and I must point out respectfully that the record has not been made. During this subcommittee's hearings in 1977 only in the testimony of Common Cause vice president Fred Wertheimer was there some description of lobbying activities that might be criticized. All of these involved lobbying by large organizations. Mr. Wertheimer did not describe the damage inflicted on our country by this lobbying.

The examples are on pages 131 to 133 of the hearings and I list them in my testimony. One of the examples was that General Motors wrote to General Motors suppliers urging them to contact Members of Congress to oppose fuel economy legislation. Another example is that presidents of the auto companies and Ralph Nader lobbied on energy but didn't register as lobbyist. And then another one was that the American Trial Lawyers Association had members send thousands of mailgrams on no-fault insurance without registering as lobbyists.

Mr. Chairman, I want to make it clear that I am not treating these examples with disrespect. Clearly, in some instances there should have been registration and possibly more. However, these few examples offered in the course of the subcommittee's hearings on lobbying reform are not enough to make a compelling case for substantially increased regulation of lobbying activities. I must emphasize that the record should be much more explicit, or otherwise how can this subcommittee possibly write the narrowly drawn legislation that any controls of first amendment rights require?

Now I have several specific point I will just describe briefly, Mr. Chairman.

H.R. 8494, as reported favorably by the House Judiciary Committee on March 24, 1978, was a significant improvement over the lobby bill passed by the House in 1976 and the bill presented to the full committee by the subcommittee.

There were four key amendments adopted by the full committee. A bill containing any one of these provisions would be unsupportable by me. The four objectionable provisions would have required the disclosure of:

(1) An organization's positions on issues.

(2) The methods by which an organization arrives at its position.

(3) A list of the organization's major contributors, which is especially distasteful; and

(4) A description of the organization's indirect lobbying activities—solitations and grassroots lobbying—which the Supreme Court has never said would not be a violation of the first amendment.

In addition to removing these constitutionally-dubious provisions, the Judiciary Committee raised the thresholds for registration to a more appropriate level, covering private organizations which do significant lobbying and excluding most organization which conduct infrequent or insignificant lobbying activities.

Mr. Chairman, all of the above described amendments are essential. Even though some of these worrisome provisions have worthy supporters, I trust that none will find its way back into any legislation the subcommittee reports. And last year, after the House changed the full committee's bill back into the Kastenmeier-Railsback bill, I drew up what members of Congress would have to write to their constituents to comply with that bill. H.R. 1979 is about the same bill. That would also require that kind of a letter to your constituents and I put a copy of the suggested letter in front of each member of the subcommittee.

Now H.R. 81, Mr. Rodino's and Mr. Danielson's bill, is identical to H.R. 8494 as approved by the Judiciary Committee on March 24, 1978. It meets minimum constitutional standards but should be amended in several respects.

I agree with Mr. Kindness that civil fines and equitable relief should be the remedies under the law. Criminal sanctions must be removed. Criminal penalties will have a chilling effect on those who want to express their views but hear only that they must comply or risk jail. That's the message that's going to get out to the people—you either do it right or you go to jail.

Now the bill should contain the limitation contained in the House-passed 1976 bill that the group would have to register and report only if the group had "paid officers, directors or employees." An ad hoc coalition of unpaid persons should not qualify as an organization. This is a most important defect in H.R. 81 and should be removed. Should ad hoc coalitions with unpaid officers be included, many such groups would undoubtedly decide not to express their views to Congress if they had to register and report as lobbyists in the same manner as the professional lobbyists would.

I am about to conclude, Mr. Chairman, and I appreciate your hearing my deeply felt concerns. In my home State of California we have had since 1974 a stringent lobby bill. The effect of the act was best summed up by Sacramento lobbyist Allen Tibbetts: "The greatest iron of all is that the 'endangered species' is not the lobbyist per se, but the so-called 'good guy' lobbyist, the ones without the bankroll."

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same groups, especially the professional lobbying firms we were told would somehow be checked by the new law." All the big outfits do is hire a couple more accountants.

Mr. Chairman, we must not repeat the unfortunate California experience. Those supporting this legislation should describe to this subcommittee in detail the evils being perpetrated on American society by unregistered lobbyists. Are they wining and dining Members of Congress? Do they curry favor through parties, hotel rooms, hunting lodges, or liquor? Just what groups are misbehaving? Is it just the professional lobbyists? Are there proponents who see this legislation as a device to put out of business certain lobbyists they don't like?

Then, after the record has been made, the misconduct described, and the dangers appraised, the bill can be drawn carefully and narrowly to meet the problem. That, I respectfully suggest, is the obligation where we are limiting and regulating rights of Americans guaranteed in the Constitution.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Edwards.

I was going to ask you a question which perhaps I need not ask you at this point. I was going to ask you to state what is the need for this legislation. You seem to have taken a posture which I would say is, in effect, there is no need for the legislation.

Mr. EDWARDS. Mr. Chairman, my answer to that question is that it is the duty of the authors of the bill and the proponents of this legislation to describe in detail where the dangers to the Republic are in the present conduct of various lobbying organizations and people lobbying in the United States, and then it is the obligation—not my obligation, but the subcommittee's to, if the dangers are real, narrowly draw legislation to handle the matter.

Mr. DANIELSON. In the early part of your statement you made the comment—you quoted from Justice Black and Justice Douglas and so forth, that where the Constitution says that "Congress shall make no law," that is exactly what our founders intended. In order that this be in the proper context, we have to look at the whole clause, of course, of the First Amendment. That is, that Congress must make no law abridging the freedom of speech or the right to petition the Government.

I think that you will concede, sir, will you not, that there are laws which might regulate the conduct which do not abridge the freedom of speech or the right to petition the Government.

Mr. EDWARDS. Well, we get back into the old argument, Mr. Chairman, about the freedom of speech can only be abridged if the person is shouting "Fire" in a crowded theater, and there are eminent authorities—Professor Michaeljohn of California, who said that's not a good example because that's action and not speech and so forth.

Mr. DANIELSON. So you don't go to the movies any more?

Mr. EDWARDS. That's correct.

Mr. DANIELSON. Well, the point I'm trying to make is that do you not concede that a law could be drawn, a bill could be drawn relating to the subject matter of lobbying which would not be unconstitutional?

Mr. EDWARDS. Yes, it can, but I do not think that the bill approved by the House of Representatives met those constitutional standards last year. I don't think that the Railsback-Kastenmeier bill meets those standards. I believe that your bill very narrowly does, but should be amended in several respects, Mr. Chairman.

Mr. DANIELSON. I thank you. Your statement is then that you feel the bill H.R. 81, which Mr. Rodino and I have introduced, does stay within the constitutional bounds but it's your position that we are rather close to the twilight zone area; is that correct?

Mr. EDWARDS. That is correct. I'm not terribly enthusiastic about it, Mr. Chairman.

Mr. DANIELSON. I didn't notice any enthusiasm. I do thank you, Mr. Edwards, for your contribution and I have the greatest respect for your opinion because I don't think there's anybody in the Congress who has a more profound long term dedication to the Bill of Rights than Don Edwards.

I yield to my distinguished colleague, Mr. Moorehead.

Mr. MOORHEAD. First, I wish to compliment the gentleman in the efforts he's made in making this bill a realistic piece of legislation. A bill that can do the job that's necessary and disclose the important elements of lobbying to the American people and, at the same time, not violate the First Amendment constitutional rights of citizens. I certainly agree with you that H.R. 81 wisely excludes disclosure of the method by which an organization arrives at the positions and a list of the organization's major contributors; and a description of the organization's indirect lobbying activities.

I think we have a much better bill than we had originally introduced last year. I assume we will be able to get it out without too much delay and see what happens in the Senate. We have spent a lot of time on this. I look forward to working with you on the important issue here and, once again, I commend you for your stand.

Mr. EDWARDS. Thank you, Mr. Moorhead.

Mr. DANIELSON. Thank you, Mr. Moorhead.

Mr. Mazzoli of Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman, and I certainly welcome our distinguished colleague, Don Edwards, who's a person of great intellect as well as great commitment. It makes his support, as well as his opposition, very important to our subcommittee. I would ask you, Don—you used the terms in your statement:

> It would be up to our committee or to the proponents of the bill to show the danger to the Republic and unless the danger could be shown either a bill which is very watered down or no bill at all should be adopted.

Now let me ask you this: did you perceive a danger to the Republic with respect to congressional financial disclosure and the lack thereof?

Mr. EDWARDS. Yes. Mr. Mazzoli. I think that the case was pretty well made by the criminal justice system of the United States there.

Mr. MAZZOLI. That some members were accepting bribes or something of that nature?

Mr. EDWARDS. That's correct.

Mr. MAZZOLI. And you feel that that legislation, which I fully supported—do you feel that was not bribery and that will cease the devoted person from taking something?

Mr. EDWARDS. You also, in those instances, weren't dealing with the monitoring of two constitutional rights, and so the burden is much heavier on the subcommittee in this bill than it was when the Judiciary Committee or whatever it was wrote the bill you referred to.

Mr. MAZZOLI. Right. You and I were on the floor many times when some of the members would cite with some insight the existence of constitutional protections on freedom of speech and disclosure and what have you which they felt were breached by the adoption of that bill.

To get back to this, do you feel that there were dangers to the Republic which could be cured by the financial disclosure bill but which don't exist for potential curing under the lobby bill?

Mr. EDWARDS. Mr. Mazzoli, I think the record was made of the dangers to the Republic in the bill you referred to. However, my problem and Mr. Kindness' problem, and I'm sure some of your problems in this bill is you will have one witness after another who will assume the dangers exist but will not describe it to you and will give you no proof. I think the part of due process is a bill of particulars. I think you have to have a bill of particulars and I don't think any witness should have any credibility without a bill of particulars.

Mr. MAZZOLI. Well, let me ask you a final question, Don. Do you believe that there's anything that the public might benefit from by way of information which would be revealed by a reasonable lobby disclosure bill, in a sense not to cite a bill or create a bill, which will kill these demons in the night but which will provide some information that the public might be able to, by consulting, reach a more intelligent, more knowledgeable vote?

Mr. EDWARDS. I think that it's possible, but I think that this subcommittee has to weigh the consequences. What is the value on each side? If the legislation is going to discourage communications to Congress—lobbying is a very important part of American life—then, probably not. But it's really up to you people to make that decision.

Mr. MAZZOLI. I thank you, Don, and I thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Mazzoli.

Mr. Moorhead, the ranking minority member, was not able to be here at the opening of the hearing. He had an opening statement and, without objection, I'd like to have it included in the record immediately following my own. Is there objection? Hearing none, it is so ordered.

[Complete statement of Mr. Moorhead follows:]

REMARKS OF HON. CARLOS J. MOORHEAD ON LOBBYING DISCLOSURE

Thank you, Mr. Chairman. Today, our Subcommittee begins again to consider legislation over which we have labored for nearly five years.

While the issues raised by this subject matter may fascinate Constitutional lawyers and scholars, they nevertheless place an extremely heavy burden on legislators. All of these proposals must be scrutinized to insure that there cannot be an adverse, discouraging impact on the exercise of the First Amendment right to petition.

I am encouraged that this time we will be hearing from witnesses representing a cross-section of the various church groups. The Churches are deeply concerned that

the proposed registration and reporting requirements will not affect their right to petition, but also their very basic religious and ministerial right of free exercise.

But, I do not mean to imply that a blanket exemption for certain preferred groups is the answer. If there is to be a new law—it must be even-handed as well as Constitutional. We cannot make a subjective distinction between "good" lobbyists and "bad" lobbyists. We should cover any organizational effort that results in significant, continuous and systematic lobbying.

Organizations which rely heavily on volunteer assistance should not be given an advantage over those which rely on their own employees or retain outside help. The activities of "professional volunteers", such as the renowned Mr. Ralph Nader, should be covered by any new law.

It is in this spirit of fairness and even-handedness, that I approach these hearings and this issue in the 96th Congress.

Mr. DANIELSON. Mr. McClory of Illinois.

Mr. MCCLORY. Thank you, Mr. Chairman.

I certainly want to applaud the testimony given here this morning by our distinguished colleague from California, Mr. Edwards, who serves as chairman of the Subcommittee on Civil and Constitutional Rights of this Committee. I think that the overall views as expressed in your testimony, as related to this legislation, reflect your underlying views on behalf of individual liberties and individual rights under our Constitution. I think that it is extremely important that we keep our eye very directly on these points as we consider this subject of new lobbying legislation or legislation directed at lobbying for which there seems to be a demand on the part of some so-called public interest groups and others.

I feel, too, that in this subject—and I think you have alluded to it in your testimony—that we should try to distinguish between deliberate and direct wrongdoers who are using inappropriate influence in connection with legislation and those, whether they are special interest or public interest or popular interest or individual interest or whatever, who are endeavoring to influence legislation legitimately through the exercise of First Amendment rights. That line may be very difficult to draw, but, if anything, I think we should draw it in favor of a broad interpretation of the First Amendment right. I can't help but feel that in the legislation we had at the last Congress and the legislation now before us, there could be serious chilling effects on Americans' rights to participate as citizens in the lawmaking process of which you and I are in charge.

One of the suggestions which has been made to this legislation by the Attorney General is even more disturbing to me, in which he suggests that we adopt a procedure which we adopted several years ago with regard to antitrust litigation. This is the so-called Civil Investigative Demand. The purpose of that authority was to try to avoid mergers which might subsequently have to be undone because of their monopolistic effect or their violation of the antitrust laws.

However, to apply civil investigative demands with respect to a lobbying group or a special interest group or public special interest group would seem to me to threaten an invasion of privacy. An invasion by Government in the private affairs—in the private operations of an organization or group or company, which would very seriously affect these First Amendment rights to which you and I are dedicated.

Do you have an opinion on this CID?

Mr. EDWARDS. I have an opinion, Mr. McClory. I would again require the Department of Justice to make a very strong case for anything such as you described.

Mr. MCCLORY. I want to concur generally in the position which you have taken and hope that in this legislation we can help to identify those who lobby in our halls. But without any effort to discourage them from these efforts by trying to determine what their contributions are, what their membership is, and a great many other details and, of course, likewise, with regard to the so-called grass-roots lobbying which could involve horrendous involvement of a new federal bureaucracy with regard to the exercise of individual rights.

I thank you very much for your testimony. I yield back the balance of my time, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. McClory.

Mr. Hughes of New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman.

I would just like to welcome our distinguished colleague to the Judiciary Committee. I don't have any questions. I just want to commend the gentleman for a very fine statement. I share many of his concerns and I look forward to working with him as we go through the important markup to secure a bill that will protect and not chill the free exercise of our very valuable constitutional rights.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Hughes.

Mr. Kindness from Ohio.

Mr. KINDNESS. Mr. Chairman, I have no questions. I would like to express my general agreement with the presentation made by the gentleman from California, Mr. Edwards, here this morning.

There is one other concern. I guess I might ask the gentleman from California to respond to, if he has a comment. That is, the danger that might arise from the enactment of legislation which would indeed have a chilling effect upon communication with or petitioning of the Congress by citizens of the United States and that danger is this: that only those organizations set up and somewhat professionally prepared to represent the voice of the people would be doing the lobbying. The gentleman touched on it in his testimony to some degree, but we are talking not only about the big corporations or business associations but public interest groups as well. The result of this may be that only the professionals will be lobbying and this it seems to me comprizes a real threat or danger to the Republic.

Would the gentleman care to respond to that or comment in that area?

Mr. EDWARDS. Well, I think that goes to the heart of the matter. As I mentioned briefly—well, actually there was a statement made by one of the bigtime lobbyists downtown when this bill was under consideration last time. He was asked, well, isn't this—I think they have 600 employees—isn't this bill going to cause your organization a lot of trouble; and he said, no, we'll just hire two more accountants.

Well, this doesn't apply to the grass-roots organizations, the environmental groups, the civil rights groups, the religious groups, the

Right-to-Lifers, you name them, who feel very strongly about all sorts of issues and have a right to express themselves. If they hear that there is a law that's been passed where they might go to jail if they can't comply with the law, they are just not going to get in touch with their legislators, even though they hear that under certain circumstances they are entitled to write their own congressman or their congressman in the same area or whatever the complicated formula might be. The paperwork involved in most of the bills that have been introduced, the requirements are mind-boggling—20 percent, one person working part of the day in 13 consecutive days or something like that. Can you imagine an organization with affiliates all over the country and the word goes out that now you have to make a note in your day book if you work any part of the day on some issue that has to do with Congress, and then at the end of the quarter you have to add up how much money was spent. It's just mind-boggling and I think it would have an immensely chilling effect.

Mr. KINDNESS. Would the gentleman agree that to the extent that such legislation enacted into law might have the effect of narrowing the representations made to the Congress by people, through decreasing the number of organizations—to the extent that that occurs, it would be a real danger to the Republic, diversity of opinion being one of the strongest aspects of our Republic?

Mr. EDWARDS. Much of our valuable information as Members of Congress comes from outside, comes from lobbyists, comes from universities, comes from constituents, comes from people all over the United States and from overseas too. H.R. 1979, for example, says that you'd have to report lobbying solicitation if 500 people were likely to have been solicited. Well, this came up in the last bill. Somebody could put up a sign in a factory and it's possible that there are 800 employees in the factory and 500 people could have walked by. That would not trigger the registration but the reporting—the reporting requirement and violation of federal law if that wasn't reported.

Mr. KINDNESS. I thank the gentleman and yield back the balance of my time.

Mr. DANIELSON. Thank you. Mr. Harris of Virginia.

Mr. HARRIS. I admire very much your vigorous support and defense of our constitutional rights and I share your sensitivity.

You didn't indicate just now that there was a reporting requirement in the bill with regard to those organizations that were not registered?

Mr. EDWARDS. The registered organizations. As I said, it would not trigger registration, but I'm referring not to Mr. Danielson's bill. I'm referring to 1979 that says on page 15, line 20:

> In the case of written solicitations, and solicitations made through paid advertisements, where such solicitations reached or could be reasonably expected to reach, in identical or similar form, 500 or more persons, 100 or more employees, 25 or more officers or directors, or 12 or more affiliates of such organization.

Mr. HARRIS. I have read that, but that only applies to those organizations that are registered.

Mr. EDWARDS. This applies to organizations already registered.

Mr. HARRIS. Yes. I didn't want to leave the implication that there was a reporting requirement placed on someone who put a

sign in a factory who had also done those things that triggered threshold for registration. You didn't mean to indicate that?

Mr. EDWARDS. I understand that, but the word will go out to the 50 states that there is a 500-person requirement in the law and there's going to be a great deal of misunderstanding about it I'm sure.

Mr. HARRIS. I agree that it wouldn't be the first time a law had been misunderstood. It's a little bit difficult to attack a law on the basis that it might be misunderstood because a lot of our good laws can be potentially misunderstood.

Your previous testimony with regard to the bill of particulars was of great interest to me. Do you feel or do you have the impression that some of our key issues that we consider here in Congress are very heavily lobbyed at times by various groups that have very special interest with regard to the outcome of that? I think of the natural gas deregulation and some of the history with regard to the lobbying efforts of an issue of very vital importance to a lot of people. Do you feel that those kinds of intensive lobbying efforts, if in fact clandestine, constitute a threat to the democratic operation of this institution?

Mr. EDWARDS. That's the chief point of my testimony. I think it's very important that the proponents of this legislation specify in great detail exactly what the dangers are, because otherwise they can't ask you to pass this bill.

In my chairmanship of one subcommittee of the Judiciary Committee I received over 100,000 communications on ERA extension. I get tens of thousands of solicitations on abortion, on busing. It wouldn't aid me one way or the other in any of these important areas to be able to go to a big book and see whether or not they were registered. I don't know what it would add to my deliberation or the subcommittee's deliberations.

Mr. HARRIS. Well, if in fact we are dealing with an issue that's important to your constituents, for example gas deregulation, and if in fact there was an intensive $10 million campaign being waged to influence the outcome of that issue, don't you think the people and the congressmen deserve to know who paid for that campaign?

Mr. EDWARDS. Well, all of the Members of Congress, Mr. Harris, are professional people who have been around in politics for a number of years. I don't think that any of us have been confused by who's sending us letters. We can recognize a lobbying letter rather readily I believe.

Mr. HARRIS. You don't then feel that there's any real help in——

Mr. EDWARDS. I know I'm waiting, and I hope the attitude of this subcommittee is that the people who have written these bills are going to bring you that kind of evidence because you're dealing with a constitutional right, two constitutional rights. So the burden is immense. In most criminal laws there's nowhere near the burden that there is in this particular one.

Mr. HARRIS. But currently you feel that you have either witnessed or had bill brought to you with respect——

Mr. EDWARDS. I think I can speak for you too, as an experienced member of the House. Mr. Harris, that you are not walking around and I'm not walking around mystified or uninformed about who's writing it. I think I know and I think you do too.

Mr. HARRIS. Well, I'm sure men of the intellectual caliber of you and I understand that, Mr. Edwards. Are you sure everybody does?

Mr. EDWARDS. That's another subject.

Mr. HARRIS. Sometimes I'm not sure that everybody does. But quite seriously, from your experience you feel there isn't any real need for this type of information. We have a lot of registration activity now that is honored more in the breach than in the observance of it. So you feel there isn't any need to improve the operation of that act?

Mr. EDWARDS. In all candor, when I see what the possibilities have been and the kind of legislation that has been considered, indeed the kind that passed the House of Representatives, I think the risks are overwhelming that the constitutionally protected rights would suffer more than the dangers that I have perceived and that's why the thrust of my testimony is make them prove their case before you agree to what they ask you to do.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. Barnes of Maryland.

Mr. BARNES. Thank you, Mr. Chairman.

I would just say to Mr. Edwards that I think you have raised some very important and thoughtful issues that I intend to give further thought to as a new member of this subcommittee. I thank you for bringing them to my attention and I yield back my time, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Barnes.

Thank you, Don. Your contribution is great, as we thought it would be. I might disclose that in the last week or 10 days since the time that we scheduled hearings on this bill the lobbying process has reached me and I detected that the question of what is the need for this legislation might be a paramount issue in considering the bill and I will also disclose that having recognized that this will be the issue, at least the threshold issue, I will urge all witnesses to please let us know what they consider to be the need for the legislation and I think that no matter what else happens, the hearings before this subcommittee will establish the specifications to support the charges or will fail to do so at least we will for the first time have an itemization of what conscientious, well-meaning Americans, scholars feel are the needs for logical lobbying regulation. I thank you. I wish you well.

We now have the honor of hearing from Tom Railsback of Illinois, a great member of this committee and of the Congress, who just may have another point of view to air. Tom, we are delighted to have you and would you just proceed?

TESTIMONY OF HON. THOMAS RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RAILSBACK. Thank you, Mr. Chairman.

Let me express, Mr. Chairman, to you and the other members my personal gratitude and also my respect for the subcommittee making lobby reform a priority issue.

I would also like to say at the outset that we are going to miss one of our former colleagues, Walter Flowers, who did in my opin-

ion yeoman work in trying to come up with a reasonable, rational lobby reform bill.

Mr. Chairman, may I be permitted to have my full statement included in the record as well as that of Congressman Kastenmeier.

Mr. DANIELSON. Mr. Railsback, without objection, your full statement and that of Mr. Kastenmeier will be included in the record. I might state at this juncture that this subject matter has been before this committee now for two previous Congresses as well as this. We have a wealth of information already in the files of the committee printed in records that are available not only to the committee but to the public as well, and I think that a decent respect for time and for the budget requires that we not reprint things that are already printed. So your statement is received and go ahead in whatever form you like. Give us your best arguments, Mr. Railsback.

[Complete statements of Mr. Railsback and Mr. Kastenmeier follows:]

STATEMENT OF REPRESENTATIVE ROBERT W. KASTENMEIER OF WISCONSIN

Mr. Chairman, I wish to join with my colleague, Representative Tom Railsback, in support of H.R. 1979, the Public Disclosure of Lobbying Act of 1979.

This Subcommittee has worked long and hard during the past two Congresses to twice produce a lobbying reform bill which protects the constitutional rights of citizens to express their opinions to their Government while, at the same time, opens the lobbying process to full public view. In both the 94th and 95th Congresses, the House overwhelmingly passed these lobbying disclosure measures.

The need for lobbying disclosure is evident. If we are to write a new law, however, we should commit ourselves to insuring that it will be an effective one. The provisions of H.R. 1979 are those which the House accepted when it gave its approval to H.R. 8494 on April 26, 1978. At that time, the House strengthened H.R. 8494, as recommended by the Judiciary Committee, by adding two provisions which cover grassroots lobbying activity and require the disclosure of large financial contributions by organizations to those organizations which engage in lobbying practices. These two provisions are essential to an effective lobbying disclosure law. The House has acted twice in affirming its support for coverage of grassroots lobbying activities and contributions to lobbying organizations. These requirements must be retained.

I am pleased that this Subcommittee is giving early consideration to the issue of lobbying reform. I am confident that this Subcommittee will be successful in resolving any differences which may exist regarding the provisions of a lobbying disclosure bill, and I look forward to working with the Subcommittee when this legislation comes before the full Judiciary Committee.

LOBBY REFORM STATEMENT OF HON. TOM RAILSBACK

SUMMARY

1. The public's right to know who is trying to influence what Congressional decisions and why is not being adequately served by the 1946 Federal Regulation of Lobbying Act.

2. To better serve this right to know, Congressmen Railsback and Kastenmeier have introduced H.R. 1979, a lobby reform bill identical to that which passed the House overwhelmingly last Congress.

3. H.R. 1979 differs from H.R. 81 in the following three respects:

(*a*) H.R. 1979 would require reporting of grassroots lobbying efforts by lobbying organizations required to register under the law.

(*b*) H.R. 1979 would require the disclosure of major organizational contributors to lobbying organizations required to register under the law.

(c) H.R. 1979 would require reporting of the lobbying efforts of the chief executive officer, whether paid or unpaid, of a lobbying organization required to register under the law.

4. Though subject to refinement and modification, H.R. 1979 represents the best starting point for legislative action in this area for the 96th Congress.

STATEMENT OF HON. TOM RAILSBACK

Mr. Chairman and members of the Subcommittee, at the outset let me thank you for the invitation to appear before you to discuss, once again, the issue of lobby reform. I would also like to take this opportunity to commend my colleagues on the Subcommittee, and particularly the Chairman, for your past and present commitment to reform of the lobby disclosure laws; a commitment best demonstrated by the fact that these hearings have been scheduled by you as one of your first orders of business for the 96th Congress.

In the 96th Congress, as was the case in the 95th and the 94th, the need for an effective lobby disclosure law is clearly evident. Lobbyists spend $2 billion each year to directly or indirectly influence Washington decisions according to Time magazine. Yet the public, and on occasion the decision-makers, are often unaware of who's trying to influence whom and why. More loophole than law, the 1946 Federal Regulation of Lobbying Act falls woefully short of the goal of assuring that most organizations engaged in significant lobbying activities are registered and their activities disclosed. In fact, while fewer than 2,000 lobbyists are registered under the 1946 law, their actual number has soared from about 8,000 to 15,000 over the past five years according to a Time estimate. Such secrecy is inimicable to our system of government and contributes greatly to the public notion that important decisions are made as a result of wining and dining and backroom deals. Such a notion must be dispelled and the important informational role played by the professional lobbyist brought into public view by an effective and even-handed lobby reform law.

It is to that end that my good friend and colleague, Bob Kastenmeier, and I have introduced H.R. 1979, a lobby reform bill identical to that which passed the House during the last Congress by a vote of 259-140. Though not wedded to each and every provision of this measure, I believe it represents the best starting point for legislative action this year. H.R. 1979 differs from H.R. 81 in three fundamental areas, areas which I would like to focus on briefly.

First, H.R. 1979 would require the reporting of grassroots solicitations made by covered lobbying organizations. Failure to report on these activities would certainly lead to a misleading and incomplete picture of the overall activities of many lobbying organizations. For example, Common Cause now spends approximately 70% of its lobbying budget on solicitations. Other organizations—including the AFL-CIO, the Chamber of Commerce, and the National Rifle Association—are increasingly relying on indirect or grassroots lobbying to exert pressure on public officials. As the President of the Chamber of Commerce, Richard Lesher, explained: "Lobbying that counts is done through the grassroots process." Last Congress, individual Members of Congress were flooded with mailings generated on such issues as Common Situs Picketing, Consumer Protection, Hatch Act Revision, Labor Law Reform and the Panama Canal and more can be expected this year.

Under H.R. 1979's strong solicitation reporting provision, basic and readily available information must be reported, including identification of the issue on which the organization undertook the grassroots lobbying effort, the means used, the approximate number of organizations or individuals solicited, and, in the case of a major ad campaign, the media outlets used and the amounts expended. For the latter, receipts would clearly be available in the normal course of business; no special calculations would be involved. Reporting would be solely the responsibility of the organization doing the soliciting; there would be no burden placed upon the individuals responding to the solicitation; and solicitation activities could not act as a trigger for coverage by this act. Grassroots lobbying is where substantial lobbying takes place today, and information about those efforts should be disclosed.

Second, H.R. 1979 would require reporting by lobbying organizations of their major contributors, those most likely to have the greatest impact on the organizations' decisions. The lack of such a requirement would invite the establishment of front organizations that mask the real source of lobbying activities. Without disclosure of major contributors, for example, it would be difficult to know that the Calorie Control Council is an organization which receives its principal financial backing from soft drink manufacturers opposing the saccharin ban; or that the Electric Consumers Resource Council is financed by the big electric industry; or that the National Gas Supply Committee is supported by the major oil companies. Without a requirement that major contributors to lobbying organizations be disclosed, there will be no way to identify the major backers of Citizen's Choice, Common Cause, or Ralph Nader's Congress Watch—organizations which purport to represent a broad public interest.

During consideration of the lobby bill in the 95th Congress, an amendment was adopted on the House floor which required disclosure of significant contributions in an effective, even-handed fashion. H.R. 1979's disclosure provision tracts this approach. Only those organizations spending more than one percent of their budget on

lobbying would be required to disclose contributions. Disclosure would be limited to those contributions of $3,000 or more, and then only if received from an organization. Individual contributions would never be subject to disclosure. In addition, disclosure in ranges of amounts will be permitted, rather than specific dollar figures. Thus, the magnitude of contributions will be revealed, but proprietary information will not be disclosed as might result if the dues schedule and the precise dues paid to the lobbying organization were made public. To us, the Constitutionality of such a requirement is clear. Speaking for the majority, Chief Justice Earl Warren wrote in the 1954 Court decision upholding the Constitutionality of the 1946 act:

> Congress has not sought to prohibit (any lobbying activities) . . . It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It only wants to know who is being hired, *who is putting up the money, and how much* . . ." *United States* v. *Harriss,* 347 U.S. 612, 625, 74 S. Ct. 808, 816 (emphasis added).

Indeed there is ample precedent for such a requirement in the Federal campaign laws which require each of us to disclose our major contributors.

Finally, H.R. 1979 would——require reporting about individuals who, though they may receive no pay for their services, are the major policy formulators of an organization and are active in arguing their case before public officials. We recognize that on this issue we must be especially wary. We are dealing with important First Amendment rights. However, reporting about the lobbying activities of a covered organization's chief executive officer, whether paid or unpaid, must be included in any fair lobby reform bill. To provide such coverage, H.R. 1979 will require reporting of the major issues on which these individuals lobbied. This would assure that the public would be able to know of the lobbying activities of such influential persons as Ralph Nader of Public Citizen, Irving Shapiro of the Business Roundtable, and the heads of various trade associations who may not be paid. We certainly have no intention of covering the myriad of volunteers who, from time to time, take an active interest in issues before Congress.

By my introduction of H.R. 1979, I do not mean to suggest that seeking to affect the actions of government officials is somehow injurious to the policy-making process. I firmly believe that this is a right guaranteed by the constitutional safeguards of free speech, assembly, and petition for redress of grievances. But where special interests seek to assert a major influence the public has a right to know, a right which is not being served by existing law. I regret that the clear need in this area remains unanswered after near misses in the 94th and 95th Congresses, but with the commitment of the members of this Subcommittee, I am confident that we will succeed in 1979 where we have failed in the past.

Thank you.

Mr. RAILSBACK. Thank you very much.

Mr. Chairman, let me first of all just disagree with somebody I respect very much, and that is Congressman Edwards. I think it is most significant that we are not digging new ground. There are 50 States that now have enacted some kind of lobbying laws. To me, it is ironic that 50 States have lobby laws and the Federal Government has a sham. We don't have any law at all.

Time magazine wrote an article entitled "The Swarming Lobbyists—Washington's New Billion Dollar Game of Who can Influence Whom."

Mr. DANIELSON. Mr. Railsback, would you give us the citation, please?

Mr. RAILSBACK. Yes. I will give you the article.

Mr. DANIELSON. Give us the citation so it's in the record.

Mr. RAILSBACK. It's a Time article on August 7, 1978.

Let me just read the introductory paragraphs of this article.

> Tax law reform. Killed. Labor law reform. Dispatched to die in committee. Consumer protection agency. Killed. Hospital cost containment. Gutted. The crude oil tax and the energy bill. Stalled.
>
> There is normally a complex number of reasons for the failure of a major piece of legislation to emerge from Congress. Sometimes it is simply that there is no clear national consensus behind it. But in these five instances, and others like them, the

force that proved decisive in blocking passage this year arose out of a dramatic new development in Washington: the startling increase in the influence of special interest lobbies. Partly because of this influence, President Carter has encountered serious difficulty in getting legislation through Congress. Partly because of this influence, Congress itself is becoming increasingly balky and unmanageable.

I'm not sure I agree with every example cited by Time magazine and yet without a doubt we were literally lobbied to death on every one of those issues.

As I see it, it is not so much a question of providing a particular abuse or even abuses, although I think there have been abuses. Rather, in my opinion, the issue is should the public have a right to know what these special interests are doing in seeking to influence particular legislation. I have no idea, for example, how much money the oil companies spent on trying to influence us on the issue of deregulation. As far as I know, there is no place where I can go for that because there are no accurate statistics.

Let me just say, Mr. Chairman, that I think the difference between our two bills—and if I lose the battle on my bill I'm still going to support your bill but I'm going to seek to amend it—the differences as I see them are these.

H.R. 1979 would require the reporting of grassroots solicitations made by lobbying organizations. Failure to report on these activities could lead to a misleading and incomplete picture of the overall activities of many lobbying organizations. For example, Common Cause now spends approximately 70 percent of its lobbying budget on solicitations. Under 1979's strong solicitation reporting provision, reporting would be solely the responsibility of the organization doing the solicitation. There would be no burden placed on the individuals responding to the solicitation and solicitation activities could not act as a trigger for coverage under the act.

Grassroots lobbying is where substantial lobbying takes place today and information about these efforts should be disclosed.

Second, H.R. 1979 requires reporting by lobbying organizations of their major contributors, those most likely to have the greatest impact on the organization's decisions. The lack of such a requirement in my opinion would invite the establishment of so-called front organizations that mask the real source of lobbying activities.

Mr. Chairman, let me give just a few examples. I have no idea who really are the major contributors to the Friends of the Earth. I don't know what the Friends of the Earth is. Others are the Calorie Control Council and the Electric Consumers Resource Council. I'm told in the one case, the Calorie Control Council is backed by the soft drink industry. In the case of the Electric Consumers Resource Council, the backers apparently are the power companies.

Finally, H.R. 1979 would require reporting about individuals, although they may receive no pay for their services, who are the major policy formulators of an organization and are active in arguing their case before public officials. To provide such coverage, 1979 would require reporting of the major issues on which these individuals lobby. This would assure that the public would be able to know if the lobbying activities of such influential persons as Ralph Nader, of Public Citizen, and Irving Shapiro of the Business Roundtable, and the heads of various trade associations who may not be paid.

By our introduction of H.R. 1979 I do not mean to suggest that seeking to affect the actions of government officials is somehow injurious to the policymaking process. I believe that this is a right guaranteed by the constitutional safeguards of free speech, assembly, and petition for redress of grievances. But where special interests seek to assert a major influence, I think the public has a right to know, a right which is not being served by existing law, and I regret that it clearly remains unanswered after near misses in the 94th and 95th Congresses, but with the commitment of this subcommittee I'm confident we will succeed in 1979 where we have failed in the past. I want to thank you, Mr. Chairman.

Mr. DANIELSON. Thank you very much, Mr. Railsback.

Mr. Moorhead of California.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Thank you, Tom, for coming here this morning and giving us your point of view on this legislation.

I did wish to make one comment about the article you spoke about. The group that spends the most money isn't always wrong and the one that spend the least isn't always right. I think we all know that all lobbying activity costs money, even if it's just a trip to Washington or a 15 cent stamp on a letter to Congress. So spending of money itself isn't necessarily bad or good. It's an exercise of the first amendment constitutional right to citizens to let their representatives know their position. In fact, I'm amazed sometimes at the ineffectiveness of some highly paid lobbyists that sit around and really have very little to offer when it comes to improving legislation.

Mr. RAILSBACK. May I just agree with you and say that there is nothing in either bill that would prevent lobbyists from spending a lot of money.

Mr. MOORHEAD. I do think the public has a right to know. For that reason I supported this legislation as it's come through the last couple years in Congress. Although I insist we have reasonable limits in the bill and that we not require ridiculous reporting that only adds to a mountain of paperwork.

I do applaud your coverage of chief executive officers in your bill H.R. 1979. I believe people like Ralph Nader, who are obviously some of the most effective lobbyists, should be covered as others. Would expenditures relating to making of communications by Ralph Nader be reported under your legislation?

Mr. RAILSBACK. Could you repeat that?

Mr. MOORHEAD. Would expenditures relating to making of communications by Ralph Nader be disclosed under this legislation?

Mr. RAILSBACK. The Nader-Shapiro provision is a reporting requirement. That, in itself, does not necessarily trigger the reporting of expenditures. But if the organization which he represents is a lobbying organization, then those expenditures would be required to be reported.

Mr. MOORHEAD. Communications to Members of Congress?

Mr. RAILSBACK. The same answer would apply.

Mr. MOORHEAD. I can perceive of a situation where a small, underfinanced organization, perhaps an environmental group, finds the burden and cost of complying with this legislation may be too

much and simply stops lobbying. What are the constitutional implications of this hypothetical situation?

Mr. RAILSBACK. Actually, this subcommittee during the last Congress raised the triggering amounts from what we had in our earlier bills. Now, the triggering point is $2,500 worth of lobbying expenditures in a quarter. In addition, I am inclined to think that the way the bill was as it finally passed the House is not going to require any kind of a big paperwork burden.

Mr. MOORHEAD. I think you would agree with me that we must see to it that everybody has an opportunity to express his point of view and not be precluded from expressing his point of view by this legislation.

Mr. RAILSBACK. Yes, I do agree with that and I, like all of you, feel that lobbyists have been a beneficial part of our system. I really believe that. They are information providers. I guess what bothers me is when very substantial sums of money are being spent to exert influence, I think the public ought to have a right to know that that's what's going on.

Mr. MOORHEAD. I think one place where we can get confused is when we start talking about the money that certain organizations are spending on their lobbying. Some of these are very ineffective with what they do with the money and it's as important to know the way they spend it as it is the amount that they spend. If they are spending it to wine and dine people that were going to vote on legislation, then I think that would be a major concern. If it's having a large staff in Washington, where they are not really granting any personal benefits to anybody, it's not. Frankly, I think the undue exposure of that information or at least the exposure in such a way that it implies that their activity is the cause for deep concern, really misleads the public.

Mr. RAILSBACK. Yes.

Right now, as I'm sure you know, there is a lobbying law that requires many of the things that we are talking about requiring. But it is simply not enforced.

Mr. MOORHEAD. Thank you again very much for testifying.

Mr. DANIELSON. Mr. Mazzoli of Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman.

I welcome our good friend Tom Railsback to us again and I want to express my personal gratitude for his leadership in the last two Congresses in this area. I think it's a matter of vital importance.

Tom, you were citing with some approval the Time magazine article citing the several bills which were sunk in the last Congress. In this regard, I think I'm safe in saying that you would not yourself have voted for each and every one of those bills had they come before you; so you don't speak to us as some spurned lover in that regard.

Mr. RAILSBACK. That is a correct statement.

Mr. MAZZOLI. Because some people might interpret your feeling about the legislation as a feeling of pique that some of your pet projects went down the drain. These matters, certainly not all of them, were not your pet projects?

Mr. RAILSBACK. As I look at that list, not all of them were pet projects of mine.

Mr. MAZZOLI. So you're approaching it on a philosophical basis, not that it's a liberal or conservative issue, but the legislative process. Is that a fair statement?

Mr. RAILSBACK. That is correct, and what we are talking about, again, is not prohibition but disclosure.

Mr. MAZZOLI. Right. I think that's a very important point, Mr. Chairman, that our witness has brought, and that is that those who speak in behalf of this bill may represent the far spectrums of any philosophical action and yet they come to agreement on the need to develop a workable, sane, and sensible reframed lobby disclosure bill because it adds to the correctness of the legislative process.

You were here when I talked with Don earlier about the danger to the Republic. I wonder if you might direct yourself for a few moments to that in the sense of Don's feeling that we have got to establish that there's danger to the Republic and if there is none that there's no bill involved. You, on the other hand, cite and emphasize information. I wonder if you might give me some words on that.

Mr. RAILSBACK. Yes. I think to answer your question I'm going to have to give an example.

Suppose that the country has an energy shortage. Suppose that it is in the best long-term interest of the country to do something about our energy problem. Suppose also that you have the oil companies or the energy industry that is directly affected. Suppose that they may like some legislation that is not in the best long-range interest of the country or the ordinary man that has no idea of what's going on in Washington, and suppose that those who seek to influence the direction of legislation are successful in getting their view enacted into law rather than something that might have been in the best long-range interest of the American public but not the particular industry.

I'm saying that, in my opinion, there have been plenty of examples where just that has happened.

Mr. MAZZOLI. Now if the information which could be developed by reason of these reports is brought to the attention of the people, how would the people benefit from this information?

Mr. RAILSBACK. I think possibly in several ways. Now we have what is called the Fair Election Campaign Practices Act which requires the disclosure of contributors. As a matter of fact, it goes even further and limits the amount that they can contribute. I would think that it would be relevant information to the voting public to take a look at the contributors to an individual Congressman and then maybe to see whether a particular special interest group spent a great deal of money and a great deal of time lobbying. Given that information, then when that Congressman comes back to run for reelection I think it's a legitimate issue—what influenced you to vote for that bill?

Mr. MAZZOLI. So you feel the people would be able to cast more knowledgeable votes, among other things, if there were a sane and sensible and properly balanced lobby bill on the books?

Mr. RAILSBACK. Exactly.

Mr. MAZZOLI. I would like to endorse what the gentleman has said, as I have in the past two Congresses. One last point, Mr.

Chairman. I would like to point out that's sometimes very hard to decide who is behind these groups. People have said to me, well, you have been up there a couple years and you ought to know who the people are for and against the issue. I think I probably do, but there are some ad hoc groups and I think the gentleman was referring to some of them—the Calorie Council and certain maritime groups—that we who are fairly professional and fairly skeptical as a matter of course sometimes don't really know who the people are. We don't really know who the prime movers of these organizations are, and certainly the public would have even less knowledge.

Mr. Chairman, I just thank the gentleman. He's made good observations, as he has over the years, and I thank him for taking time to join us.

Mr. DANIELSON. Mr. McClory from Illinois.

Mr. MCCLORY. Thank you, Mr. Chairman.

First of all, I want to express my great respect and admiration for my distinguished colleague from Illinois with whom I generally agree, however——

Mr. RAILSBACK. I don't like that beginning.

Mr. MCCLORY. However, on some issues that are involved in this legislation I'm afraid we have a rather sharp disagreement.

My own personal view is that labor law reform legislation, the consumer protection agency legislation, and a lot of the energy stuff that the Carter administration recommended, which were resoundingly rejected, reflect an overall popular view that we don't want too much Government. We don't want Government involved in our individual lives, our corporate or industrial or private lives, and that we are simply reacting in accordance with this philosophy.

Last year in the case of the *First National Bank of Boston* v. *Bellotti,* the Supreme Court decided that first amendment rights applied to corporations as well as individuals—corporations and other organizations. One of the parts of the bill for which you are the sponsor, paragraph 7 on page 15, relates to a requirement to report with regard to all written communication, newspaper advertisements, and so on, concerning so-called grassroots lobbying efforts.

I have one particular instance that I'd like to ask you about. I have a fairly large industry in my district, Outboard Marine Johnson Motors. They make outboard motors. During the gas embargo there was a governmental edict to have no more gasoline for outboard motors for recreational purposes. I heard from practically every employee of Johnson Motors and I'm sure that the company called attention to the fact that if you fellows don't write to your Congressmen and get something done about this these are your jobs.

It seems to me for us to impinge or to throw any cold water on that kind of communication by a company with its employees, and require a quarterly reporting with respect to this kind of activity would be an infringement of the first amendment rights of the company as an entity and its employees.

How would you relate that part of your bill and that kind of activity to this decision by the court?

Mr. RAILSBACK. I would support what the subcommittee did which was to grant a regional exemption.

Mr. MCCLORY. So that that kind of reporting would be exempt?

Mr. RAILSBACK. Yes.

Mr. MCCLORY. I'm encouraged by that. Do I understand that you might entertain an amendment to your bill?

Mr. RAILSBACK. I think it is in my bill. I think I also have an exemption.

Mr. MCCLORY. So your geographic exemption that you made reference to would exempt the communication with me, but would not grant an exemption with regard to the communication with other Members of the Congress, for instance?

Mr. RAILSBACK. That is correct. It's actually on page 7 and it's subsection "D".

Mr. MCCLORY. So, you will have free speech as far as your own Member of Congress is concerned but not with regard to somebody on the Ways and Means Committee, who's going to resolve this issue?

Mr. RAILSBACK. Yes. My understanding is that the solicitation provision does not require, for instance, as I think at one time a provision may have, any kind of identification of the individuals to whom the solicitation letter was sent. All we do is require an attachment in the report of a copy of that solicitation.

Mr. MCCLORY. You made reference to the Federal election laws and reporting requirements there, and I have no objection to that. As a matter of fact, I have always been perfectly willing to make known who the contributors to my campaign are and I feel that these private contributions are appropriate. But, I don't see how that relates to this lobby legislation. There's no more reporting going to be required here of that nature, is there?

Mr. RAILSBACK. What I was saying is I think the two dovetail with one another. What is the matter with requiring disclosure of large organizational contributions to the National Senior Citizens Council or AFL–CIO or the Calorie Council or the Friends of the Earth? I do want to say there's an exception in the bill, if somebody is afraid that it is going to cause them problems, there is kind of an exemption that could be triggered.

Mr. MCCLORY. Well, I think the fact that there is the exemption indicates the inadvisability or the vulnerability of having that kind of a provision in there, and I'm thinking of groups like the Friends of the Earth. It would be embarrassing for somebody who works, for instance, for a public utility to be contributing a fairly substantial amount of money to Friends of the Earth. That would certainly discourage contributions to the Friends of the Earth.

Mr. RAILSBACK. Right now the law is more than $500. We actually raise the bottom category to $3,000.

Mr. MCCLORY. Well, I think my time has expired.

Mr. DANIELSON. Thank you.

Mr. Hughes of New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman.

I just want to welcome our distinguished colleague to the subcommittee. Even though we did not agree on some of the issues that we debated last year, I think the gentleman made very significant contributions and I commend him on the statement.

Thank you, Mr. Chairman.

Mr. RAILSBACK. Thank you very much.

Mr. DANIELSON. And Mr. Kindness from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

I'd like to thank our colleague, Mr. Railsback from Illinois, for his statement and for his work in this field. There are a couple of things I'd like to clear up in your testimony, Tom.

The statement was made that there are 50 States that have laws regulating the disclosure of lobbying activities and that the Federal Government has only a shell or hull or some such expression.

I take it that the gentleman didn't mean to imply that there are 50 or even 25 or even 20 States that have lobbying laws that are any better than the Federal law?

Mr. RAILSBACK. Better than what?

Mr. KINDNESS. I take it you did not mean to imply that there are 50 States or even 25 States that have lobbying laws that are any better than the existing Federal law. Is that correct?

Mr. RAILSBACK. I'm inclined to think, without knowing all of the various State laws, that many of the States have far better laws than what we have because we don't have any law. I don't think our lobbying law has ever once been enforced.

Mr. KINDNESS. The gentleman is quite incorrect and I'm sorry to note that with all his work in this field he's not aware of the notable cases interpreting the 1946 law.

I'll go on to examine the next point. The moneys spent in lobbying, I think it was agreed earlier, has no necessary relationship to the effectiveness of the lobbying effort. What is the logical relationship between the amount of money spent and the public's right to know? Does the public have a pressing interest in the amount of money spent, when we agree that there is no real logical relationship between the money spent and the effectiveness of the lobbying effort?

Mr. RAILSBACK. I'm inclined to think that if one special interest group was, for instance, to spend $10 million seeking to influence some particular legislation, that should be information available to the public. In other words, the public ought to have a right to know that large sums of money were spent seeking to influence legislation.

Mr. KINDNESS. Well, then, to pursue that, reference was made to an article in Time magazine of August 7, 1978 with a parade of horribles, and yet we don't at this point really know what the real reason was or the process by which each of these examples occurred. I take it the gentleman from Illinois isn't in a position to recite the reasons for each of those failures of legislation to be enacted. So then the article in Time magazine and the opinion they express there it seems to me is not all that persuasive. That is, it would be irresponsible for us—that is, the members of the subcommittee—to be influenced in the slightest by the allegations of that nature. Certainly we shouldn't be influenced in any greater degree by the high-powered expensive opinion of Time magazine than we should be influenced by the opinion of any citizen I would think. Would the gentleman agree with that?

Mr. RAILSBACK. I would think that Time magazine, before writing that cover story, probably had many people assigned to investi-

gating, preparing, and writing that article. I do happen to know that Neil MacNeil, who is in my opinion a very respected member of the Time staff, was involved in that particular article and I happen to have a very high regard for him.

I also am aware of the tremendous lobbying on, for instance, the labor law reform and I also know what happened to that in the Senate where the lobbying was even intensified.

I'm just saying that I don't see anything wrong in letting the public know that in that particular case, both labor and business spent, in my opinion, tons of money.

Mr. KINDNESS. And we know that under the existing law, don't we, and the public knows it?

Mr. RAILSBACK. We don't have any idea at all.

Mr. KINDNESS. We don't know the amounts, but it's quite apparent.

Mr. RAILSBACK. We don't have any information at all. I wouldn't know where to go to get that kind of information. The reason is that under the existing law that therefore high-paid Washington lawyers—and we may be one some day and I recognize that—they can say lobbying is not their principal business, that they are lawyers, and that they aren't required to report at all what they spend or what they do in lobbying efforts. They are not lobbyists even though they are lobbyists.

Mr. KINDNESS. But certainly in extreme situations like that Members of Congress and the press and the public are aware that a lot of money was spent by both sides.

Mr. RAILSBACK. They don't know anything. I have no idea how much was spent on the energy bill trying to influence that bill or tax reform or labor law or hospital cost containment.

Mr. KINDNESS. Would you really be any better informed if you knew the exact amounts of money? That's the point I'm trying to get at.

Mr. RAILSBACK. I'll tell you this. As a legislator, I think I would be a little suspicious if one particular special interest group spent a ton of money. I think that I would want to take a little bit more careful look at that to see if maybe there was some special influence.

Mr. KINDNESS. Then following that line of reasoning, we ought to have, as members of the public, the right to know how much Time magazine spent on its lobbying effort in behalf of such legislation.

Mr. RAILSBACK. That wouldn't bother me at all and——

Mr. KINDNESS. I think it would bother Time magazine.

Mr. RAILSBACK. Well, so be it. The principal architect of lobbying reform has been Common Cause. Common Cause has also been the single biggest reporter of lobbying activities.

Mr. KINDNESS. The question still occurs, though, of whether we have a right to adopt legislation that would have a dampening or chilling effect on the exercise of first amendment rights by individuals or organizations. In the absence of a purpose that we can define—and that's what I'm trying to get at here—would the gentleman care to attempt to state why it is that knowing how much money is spent would be helpful to the public in return for giving up this little bit more freedom?

Mr. RAILSBACK. I will try to give you an example. I'm trying to think of the most serious problems that confront our country. One of them is, without a doubt, energy. I'm saying that if substantial sums of money were spent by the particular industry to be directly affected and then we did not pass a law that is beneficial to the general public, the general public ought to know that there were substantial activities by a special interest group seeking to influence that particular legislation.

I might add we can talk about some of these deregulation bills, trying to deregulate the trucking industry, trying to deregulate the airline industry. I think that it would be of great interest to me, as a Congressman, let alone the people that I represent, to know when we take up the issue of trucking, whether there's substantial attempts by special interests to influence that. What it means, is that when I cast my vote and I go back to my district I've got to be able to explain why I voted the way I did. I don't see anything wrong with that.

Mr. KINDNESS. Are you indicating then that the public is presently doesn't know that there are pressures being brought on the Congress or that money is being spent? Or, is it only that the exact amount is not known?

Mr. RAILSBACK. Time magazine certainly called the attention of the American public to what they call lobbyists swarming all over Washington. And here we have 50 States that have laws, but the Federal Government doesn't have any effective lobby disclosure law. It bothers me.

Mr. KINDNESS. Maybe we ought to clear up that allegation about 50 States because apparently it hasn't been sufficiently cleared up. I would certainly be interested in having for the record any information that indicates the effectiveness of State lobbying disclosure laws in relation to the Federal law. I realize that it's not something worth a great amount of time and effort, but the allegation can't be left just hanging there without some kind of substantiation that indicates that the Federal law is that deficient in comparison to State law, some of which are not.

Mr. RAILSBACK. Can I call your attention to something that I have before me, Mr. Chairman. I have what is called a summary of lobbying disclosure laws and regulations in the 50 States. The editor is J. Peter Siegel. The title of the magazine is called Lobbying Reports. This is report No. 1. I don't know if you have seen this or not. In fairness to what Mr. Kindness is saying, I can't speak authoritatively that all of the State laws are effective because I do not know. Nevertheless, this is a summary of these laws.

Mr. KINDNESS. We have a very similar problem under the law in Ohio, for example, and many who serve in State legislatures should be aware that there is a considerable similarity between the State laws on lobbying and the Federal law too.

I thank the gentleman and yield back my time.

Mr. DANIELSON. Mr. Railsback, the document you most lately referred to, I do not know whether we have it in our files. Would you be kind enough to lend it to us so we can make a check?

Mr. RAILSBACK. I certainly will.

Mr. DANIELSON. And we will decide whether or not to incorporate it in the record.

[The document referred to is set forth in Appendix 2, page 361.]

I'm trying to sum up a few feeling I have here. I very much appreciate first of all your delineation of some of your concerns, which I take it are your explanations of why we need a change in the lobbying laws. I believe that throughout your testimony they have been fairly well cataloged. I think we should keep in mind that the bill before us and the bills in the last two Congresses have not sought to prohibit lobbying nor to regulate it or to direct its course or form in any detail at all. They have simply been to require a disclosure of certain aspects of lobbying activity, principally those involving large amounts of money.

Mr. RAILSBACK. I agree with that.

Mr. DANIELSON. I might say they have been directed at what could be called commercial lobbying as opposed to the efforts of an individual to petition his Congress. There are decisions in our case law which uphold the constitutionality of this type of legislation provided that it is within certain safeguards. I think a basic decision we are going to have to come to eventually in markup is how far may we go, not just within the letter of the Constitution, but within the spirit of it as well; how far may we go in requiring disclosure without unduly inhibiting any of the first amendment or other constitutional guarantees. We may have to make a careful measurement of when does the requirement of disclosure begin to impinge on free speech and communication. If you reach that point, does it tend to inhibit; does it cool it; does the cooling become a chilling or a freezing? I don't know. There's a degree we are going to have to find here someplace and your testimony and the material you have supplied to us, not just this year but in the past, will be of great help to us.

Mr. MCCLORY. Would the chairman yield to me for one moment?

Mr. DANIELSON. Surely.

Mr. MCCLORY. This thought comes to me and that is, so many times legislation on which there is a lot of lobbying from so-called special interest groups results because the administration has made promises. For instance, the administration has made promises in support of labor law reform legislation or in support of a consumer protection agency or whatever.

The administration is the lobbyist for the legislation and the halls are filled with people coming over here from the White House, calling all kinds of people from other offices to engage in lobbying. It would seem to me that if we're going to be fair on both sides, that we should require the executive branch to report fully with regard to those persons who are engaged in lobbying in their behalf. How much their salaries are and how much is being spent. Because I think it would reflect the amounts that are spent for lobbying by Government for more Government regulation, which the American people don't want. It also far exceeds the amounts that the private sector is required to expend in lobbying against the inroads of Government on their private and individual territory.

Mr. DANIELSON. Would the gentleman yield back to me?

Mr. RAILSBACK. I could not agree more with what you said. I think there's a statutory prohibition right now.

Mr. DANIELSON. I'm delighted that I can disagree with both of you on this point. I think it personally would be unseemly to restrict any one branch of the Government, particularly the two branches which have something to do with legislation, from communicating most freely with each other. I say most freely. I put no limits on that and I would like for the amusement of both you gentlemen that you review the Congressional Record of the debate in the 95th Congress on this very point where the Congress in its wisdom and the House at least in its wisdom turned down the theory resoundingly.

Anyway, I want to thank Mr. Railsback very much for his assistance here. I'm pushing along because we still have another witness and we want to have the benefit of her testimony this morning if we possibly can. So, Tom, thank you very much. We will look forward to having a chance to be sure we have that other information on file.

Mr. RAILSBACK. Thank you.

Mr. DANIELSON. I'm looking forward to a battle on the floor with you when you try to put in too many amendments.

Our next witness is Patricia Wald, Assistant Attorney General, Office of Legislative Affairs, Department of Justice.

I wish to admonish or at least alert the subcommittee to the point that if possible I hope we can stay here until we get the benefit of all of Ms. Wald's testimony and complete today's scheduling without having to carry it over.

Ms. Wald, the floor is yours.

TESTIMONY OF HON. PATRICIA M. WALD, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE, ACCOMPANIED BY ROBERT W. BEDELL, DEPUTY COUNSEL, OFFICE OF MANAGEMENT AND BUDGET

Ms. WALD. Thank you, Mr. Chairman. I'd like to introduce Mr. Robert W. Bedell, who is a deputy counsel at the Office of Budget and Management and also a member of the administration task force on lobbying, who is accompanying me today.

Because of the lateness of the hour, I request that my statement be put in the record in full and with your permission I'd like to just cover a few highlights of that testimony and then save the rest of the time for questions.

Mr. DANIELSON. Without objection, so ordered.

[Complete statement follows:]

STATEMENT OF PATRICIA M. WALD, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: I am pleased to appear before you as a representative of the Administration to support H.R. 81, the proposed "Public Disclosure of Lobbying Act of 1979."

By now Mr. Chairman, you and most of the members of your subcommittee have had considerable experience with lobbying reform legislation. H.R. 15, which passed the House in the Ninety-fourth Congress, was a product of this subcommittee. In the Ninety-fifth Congress, this subcommittee reported H.R. 8494, which, with amendments, passed the House on April 26th of last year.

In April of 1977, then Deputy Attorney General Peter F. Flaherty presented the Administration's views on lobbying reform legislation to this subcommittee.[1] I will not repeat his statement of the inadequacies of the present lobbying reporting statute.[2] Suffice it to say, as the full committee found: "Without exception, proponents and opponents of proposed legislation have characterized existing law as ambiguous, unworkable and unenforceable."[3] Nor will I repeat the reasons why the Administration believes that the 1946 Act should be replaced by a comprehensive lobbyist registration and reporting statute. In brief, we believe that the American people need and deserve to know the sources and intensity of significant organizational pressures brought to bear for or against critical pieces of legislation.

The Administration's efforts and this Subcommittee's productive work in the last two Congresses attest to our joint commitment to lobbying law reform. Instead of discussing the need for reform today, I will proceed to examine the most desirable contours of such reform.

H.R. 81, in our view, is a workable bill, around which a consensus can be built to push lobbying reform through to completion in this Congress. It is identical with last year's full Judiciary Committee's reported version of H.R. 8494; it has already received thoughtful attention from the House of Representatives. H.R. 81 would replace the moribund 1946 Act with a comprehensive and enforceable statute requiring qualifying lobbying organizations to register and disclose certain information concerning their lobbying activities. Nevertheless, we think that H.R. 81 can be made an even better bill. As you know, we have informally submitted several draft amendments to the subcommittee staff which I will discuss in my testimony. We believe that these amendments will reduce paperwork burdens, better protect the First Amendment activities of organizations and individuals who lobby, and provide a more appropriate enforcement mechanism. They have been developed after intense consultation with a variety of interest groups.

REGISTRATION AND REPORTING

As you know, section 3 of H.R. 81 would require the registration of any organization which (1) makes an expenditure in excess of $2,500 in any quarterly filing period for the retention of an individual or organization to make lobbying communications, or "for the express purpose of preparing or drafting any such lobbying communication", or (2) which employs an individual who makes lobbying communications on any part of thirteen days or more in any quarterly filing period, or employs at least two individuals, each of whom makes lobbying communications on any part of seven days, and which makes an expenditure in excess of $2,500 in such quarterly filing period on the making of lobbying communications.

An "expenditure" is defined to include any payment made (1) to or for the benefit of a Federal officer or employee, (2) for mailing, printing, advertising, telephones, or consultant fees which can be allocated or attributed to making or preparing lobbying communications, or (3) for the retention or employment of individuals or organizations which make lobbying communications. A Federal officer or employee would include members of Congress, their staffs, and selected Executive branch officials.

Section 6 of H.R. 81 would require registered organizations to report four times a year (1) the total expenditures made for lobbying communications, (2) an itemized listing of each expenditure in excess of $35 made to or for the benefit of any Federal officer or employee, (3) expenditures in excess of $500 for any social event held for the benefit of a Federal officer or employee, (4) the identification of any retainee or employee making qualifying lobbying communications and expenditures pursuant to such retention or employment, (5) a description of the issues upon which the organization spent a "significant" amount of its lobbying efforts, and (6) known direct business relationships between the reporting organization and a Federal officer or employee whom the organization has sought to influence during the quarterly filing period.

The information that must be reported by a registering organization is a critical element of a lobbying bill. Too onerous or expensive reporting requirements could constitute a threat to a small organization's ability to survive; too little reporting could make a law meaningless. We think H.R. 81 approximates the right balance; we have only a few recommendations to make for improvement.

We have provided Subcommittee staff with an amendment which would limit the expenditures required to be accumulated for the $2,500 threshold in Section 3(a) to

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[1] *See* Statement of Peter F. Flaherty, Deputy Attorney General, on Reform of the Lobbying Act before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, House of Representatives, April 21, 1977.

[2] Federal Regulation of Lobbying Act of 1946 (60 Stat. 839; 2 U.S.C. §§ 261-270).

[3] House Committee on the Judiciary, Public Disclosure of Lobbying Act of 1978, H.R. Rep. No. 95-1003, 95th Cong., 2d Sess. at p. 45.

expenditures for the retention and employment of persons who prepare, draft, make or assist in making lobbying communications, thereby excluding from the threshold determination such overhead expenses as telephones, advertising, mailing, etc. Retention and employment expenses for any lobbying activities would be computed at the full daily rate for each day on which such activity occurs.

Keeping track of salary and retention expenses is within the bookkeeping capability of even the most unsophisticated organization. Moreover, such expenses are relatively easy to verify. Our amendment would, like H.R. 81, include expenditures for the benefit of any Federal officer or employee within the amount to be accumulated for the purpose of determining the $2,500 threshold.

We suggest a similar amendment to the reporting provisions of H.R. 81. Lobbying communication expenditure reporting would then be limited to salaries of retainess or employees, computed at the full daily rate, for persons who prepare, draft, make, or assist in making lobbying communications. We would retain expenditure reporting for any benefit costing in excess of $35 to a Federal officer or employee and for any social event costing more than $500 which specifically benefits any Federal officer or employee. We would also retain H.R. 81's separate reporting requirement for expenditures for preparation, printing, and distribution of printed lobbying communications, but only to the extent those costs exceed $5,000 in any quarter.

H.R. 81 would also require a description of the issues upon which the organization spent a considerable portion of its lobbying efforts. A House floor amendment [4] last year added the duty of disclosing the identity of the retainee, employee, or chief executive officer who lobbied on each issue. We suggest that the registrant be required to state only the two chief issues on which it made the most substantial expenditures and to identify only the individual lobbyist connected with these two issues. If the organization lobbied on more than two issues, it would simply list the remaining issues, up to a total of 13.

Two reporting issues of serious concern should be mentioned. Last year's House passed bill would have required detailed reporting by a registered organization of solicitations made to 500 or more persons or 100 or more employees of an organization to persuade such individuals or organizations to lobby their Congress persons to support or oppose a bill. The proponents of such a measure point out that major lobbying organizations spend substantial amounts of money and effort in "grassroots" lobbying, and that to ignore reporting of that aspect of major lobbyist activities is to ignore a greater part of the "problem" or "process". They would require identification of the issues as to which "grassroots" campaigns were launched, the means used, the number (approximate) of individuals or organizations solicited, and in case of advertising media outlets and amounts expended. There can be little doubt that some reasonable amount of information about "grassroots" solicitations will add to the overall usefulness of the law's disclosure requirements, and, accordingly, the Administration continues to support in this Congress—as it did in the last—a solicitation reporting provision. After extensive consultation with outside groups, however, we feel that such a provision should probably be more limited in the information required, i.e., the issues and total expenditures involved in any solicitation might be sufficient. And a threshold, perhaps in the range of $40,000-$50,000 for total expenditures in solicitations should be considered. We suggest these concessions out of an awareness that civil liberties organizations consider lobbying solicitations to be on the very cutting edge of protected First Amendment freedoms and worthy of an even higher degree of protection than direct lobbying. Mor practically, we would not llke to see the solicitation provision again become a focal point for rallying sufficient opposition to defeat the entire bill.

On a second point, the House-passed bill last year required disclosure (by range of contributions) of organizational contributors of over $3,000 if the contributions were used in whole or in part by lobbying and if the organization devoted 1% of its revenues to lobbying activities. We continue to support such a requirement this year, with the suggestion that the floor be raised to $5,000 and that an amendment we have submitted be adopted which would insure that if organization's records are subpoened or discovered in enforcement proceedings, an in camera proceeding be allowed to avoid public disclosure of an organization's members. Here again, we caution, however, that even if such a provision is not adopted, its omission should not be allowed to block the push for lobbying reform. If we can achieve registration and reporting of all eligible lobbying organizations which spend $2,500 or more per quarter on direct lobbying activities, and identify the issues on which they expend their efforts, we will have achieved much.

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[4] *See* 124 *Cong. Rec.* H3242-H3269 (daily ed. April 4, 1978).

ENFORCEMENT

Another vital issue in any lobbying reform bill concerns enforcement. H.R. 81 contains both criminal and civil sanctions. We propose a change in the enforcement scheme based upon extensive deliberations by the Department of Justice's Criminal Division which will have the chief obligation of enforcing this law and by business and civil liberties as well as good government groups. It has come to our attention finally, that many small organizations who may be subject to the law, fear an onslaught of criminal proceedings based on inadvertent mistakes or omissions in compliance. Because lobbying reform law, such as H.R. 81, focusing on First amendment protected activities, would be a major innovation (the emasculated 1946 law depended entirely on criminal sanctions—a dead letter in practice) and because we believe such a law can be effectively enforced by civil sanctions, we propose to abandon criminal penalties altogether.

To handle the extreme cases of continual violators or the flouting of the statute by knowledgeable and sophisticated corporations, who may regard its sanctions as a cost of doing business, we suggest a relatively high upper limit on the civil penalties that can be assessed i.e., $100,000. To protect less affluent or sophisticated organizations, the court, before imposing a penalty, would be required to consider the nature and circumstances of the violation, the organization's record, any previous violations, and the impact of the penalty on the organization's ability to engage in lobbying communications.

As you know, H.R. 81 would provide a "knowingly" culpability standard for the $10,000 maximum civil penalty, with a "knowingly and willfully" standard for the felony criminal violation. We would retain the "knowingly" standard for civil penalty, but we also suggest the provision of an affirmative defense for a violator who could show that he had a good faith and reasonable belief in the legality of the conduct constituting the violation. The "knowing" culpability standard coupled with this affirmative defense should provide satisfactory protection for the relatively naive organization which does not intend to violate the statute or which believes that the Act may be unconstitutionally applied.

Since we would abandon criminal penalties, we need to provide for a means whereby evidence of a civil law violation can be gathered short of the normal discovery obtainable only after the filing of a civil suit. Otherwise the reputation of an organization could be unnecessarily damaged by the Government's filing of a civil suit without its first being able to insure whether or not there is sufficient evidence to constitute a violation. We therefore, recommend that the Government be authorized to obtain pre-litigation discovery by the use of civil investigative demands. We have supplied the subcommittee staff with a draft of a suggested CID provision modeled on the Antitrust Civil Process Act,[5] and the Racketeer Influenced and Corrupt Organizations statute.[6]

The CID's would be issuable only against organizations subject to an investigation under the statute, or any officer, director, employee, or retainee thereof; they could be issued only after the Department of Justice has facts or circumstances which reasonably indicate that a person may be in violation of the Act; they could be issued only with the written approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant or Deputy Assistant Attorney General; and they could be issued only to obtain documentary material. We further provide for the pre-enforcement judicial review of CID's and for the safe custody and legitimate use of material obtained by the investigative demand.

We are somewhat apprehensive about the provisions of subsections 8 (a), (b), and (c) of H.R. 81, requiring notice and informal methods of conference or conciliation before the bringing of a civil action; we do not think judicial enforcement of the statute should be barred solely because the violator, no matter how willful, agrees to come into compliance. That could effectively render the statute unenforceable, since a violator could remain in violation until the last moment before the judicial imposition of a sanction, and then agree to obey the statute again and again.

We think that the purposes of the conciliation provision can be better served by a provision which requires the Attorney General to report to the alleged violator at least thirty days prior to the bringing of a civil action, specifying in what respects compliance with the statute is deficient and offering to discuss the deficiency.

Finally, H.R. 81 would give the Comptroller General the duty to prescribe rules and regulations interpreting and and implementing the law, which regulations would presumably be binding in the Executive and the violation of which could lead to the imposition of a civil penalty. From a constitutional standpoint, we are uncomfortable with the grant of final rulemaking authority, an executive function,

[5] 76 Stat. 548, 15 U.S.C. 1311.
[6] 18 U.S.C. § 1968.

to an official who is not a member of the Executive branch. We propose a reformulation which has the Attorney General promulgate such rules, after consultation with the Comptroller General. We also firmly believe that those rules and regulations cannot constitutionally be subject to the one-House veto intended by section 10 of the bill, and therefore we recommend the deletion of that portion of the bill.

Let me conclude with a reminder that our lobbying law for 30 years has been an embarassing joke. The lobbying industry has grown into a multimillion dollar enterprise with no effective disclosure or reporting oversight. This Administration and this Congress working together can do better. It *is* possible to require disclosure of substantial lobbying organizations and their expenditures without infringing First Amendment guarantees. We in the Department of Justice pledge to administer the law in a way that will insure full freedoms for First Amendment organizations and minimize paperwork burdens. The American people have a right to know what significant organizational influences are affecting their national legislature.

Ms. WALD. Let me address myself first to a point which has obviously become very focal in these hearings: What is the fundamental need for this kind of legislation?

I think some very persuasive arguments have been made by Congressman Railsback to which I would like to add a few thoughts.

The most important thing I'd emphasize is that this is legislation which prohibits nothing. It prohibits no amount of expenditure for lobbying. It prohibits no person, no company, no organization of any sort from doing that lobbying. I would also point out that the reason the administration is supporting it and has supported lobbying reform, and I believe the reason that at least one House of Congress and sometimes two Houses of Congress have passed it consistently in the past, is based upon an assumption that it is not necessary to document a list of specific abuses of the lobbying process. Perhaps there may be a few. Perhaps there may be many. I think the important assumption upon which we operate is that the legislative process is a vital part of our national life.

The open part is when Congress is conducting its hearings in public. A few years ago it changed its rules to require its markups, except for executive sessions, to be in public. That part too is an open part of Government.

We also have the executive as well as Members of Congress in the last few years being required under the ethics legislation to have extensive financial disclosures. We have indeed the Freedom of Information Act which allows the citizen to require disclosure of a great deal of what goes on in the executive process. We have such things as the Securities and Exchange Commission which puts on file—we don't know how many people read it and we don't know what they do with the information—large amounts of information about businesses which indeed have a constitutional right to conduct business.

The point that I'm making is that the one part of the process which remains essentially closed and essentially invisible is the lobbying, the pressure that is brought to bear upon the legislature.

Now indeed, we are exquisitely sensitive to the fact that this is a constitutionally protected first amendment right to redress one's grievances, to petition the Government, and indeed many of the lines that you have drawn in your bill and that we are recommending drawing disclose that sensitivity.

Certainly, if one were to try to find all the information that would be useful and relevant to a citizen or to an investigative reporter in a lobbying reform law, we would have a much different

piece of legislation here. I think what we are trying to accomplish, and I think your bill accomplishes this in great part, is to draw a reasonable line which would accomodate those interested citizens who want to participate in the legislative process, want to know why there are laws being passed or not passed, to know some information about where the largest amounts of money, the largest amounts of expenditures are coming on particular pieces of legislation.

One of the other things which we have striven for very strongly in the executive, through large numbers of meetings with other groups, is to try to arrive at a balance without unduly hampering lobbying activities. Just as we are asked and the supporters of this bill are asked to document the reason for this bill, so I would say that, in turn, we might ask our opponents where is the documentation, if any, that will show it will have a chilling effect. I don't think any exists on either side of this controversy.

The reason I make that comment is actually drawn from some personal experience of my own. I worked for many years in one of these small public interest type organizations. I am familiar with the fact that they don't have sophisticated accountants, et cetera. I really believe that the reporting requirements and the registration requirements in this bill and some of the relatively simple amendments which we have suggested will not overburden those organizations to the extent of preventing them from fulfilling their first amendment rights.

Certain key points of the bill—it's only organizations. It's not volunteers. It's not individuals who are required to register. The number of things that they must disclose in the registration statement and in the reporting statements are really relatively simple. I don't think they require sophisticated accounting, especially with the few amendments we suggest.

The other point I would like to make is that it would be very difficult, indeed though perhaps desirable, if the executive were to be able to document a long record of abuses in the lobbying process, but I really feel that's somewhat of a "Catch-22" process because as you well know, since 1949 we have had a virtually unenforceable law on the books with criminal penalties only. I don't believe it would have been within the jurisdiction of the Department of Justice or a legitimate use of its investigative capacities—in fact, I think we would have been subject to severe criticism had we gone off and started investigations of first amendment lobbying organizations to see what they were up to. The fact there was a criminal standard, the fact that the law has been reduced to virtually a nonentity by interpretation, means in fact we just plain had no jurisdiction to document abuses.

I find it somewhat ironic therefore that we all draw on one Time article to document, insofar as it is able to document, the extent of lobbying and indeed I have to go on the same Time article. As far as I know, the facts of the amount of lobbying that goes on, the extensiveness of it, the nature of it, just plain do not exist. So when we read figures such as, in 1954 the total reported lobbying expenditures exceeded $10 billion—that's under the present statute—and by 1964 the figure had dropped for reported expenditures to $4 billion, and yet any one of us who have lived in Washington and

been in the legislature knows the amount of lobbying has not decreased—it has significantly increased, we wonder. Time estimates that lobbyists spend $2 billion—we don't know if that's true. We have no way to know—I myself have personally looked at some of the lobbying expenditure reports filed under the 1946 act and they are laughable. There are such things in them as no money for salaries in cases where it's very clear that indeed there are just moneys being spent on lobbying. Time estimates an 8,000 to 15,000 rise in lobbyists over the last 5 years. We have no way of documenting whether that's true. We know only 2,000 are currently registered under the 1946 act and that several full-time lobbyists report expenditures of less than $10 during a quarterly filing period.

I think the point is that if we had some kind of a reasonable disclosure law we would know the facts. We would have a notion where to begin to find out if there are abuses in the process. It will continue to be virtually impossible unless active commissions or magazines or investigative reporters write articles or conduct studies to know or document those abuses.

The more fundamental point, however, is I don't think that's the reason why we are passing this law. I think we are passing this law to allow the electorate in a very sophisticated economy, where thousands of laws are introduced and hundreds of laws are passed each session, to at least have some place to go if they want to find out what the major economic pressures are that are being brought to bear on the legislators. We think that's a sufficient enough justification.

To move on very briefly to the bill itself, H.R. 81 is in our view a workable bill around which a consensus can be built to push lobbying reform to completion in this Congress. It's identical with last year's full Judiciary Committee's reported version and it's already received thoughtful attention from the House of Representatives.

We do have, and I detailed in my testimony, several amendments which I'm not sure I want to take up a great deal of this subcommittee's time with right now and which relate to the mode of registration and reporting. They are, in the main, designed—and we submit them for your consideration—to make registration and reporting requirements easier, more simple, more comprehensible for the smaller organizations. For instance, in deciding whether or not an organization meets the $2,500 threshold, we suggest consideration solely of the salaries. That way we won't have organizations having to decide how much of their overhead and how much of their telephone, et cetera is attributable to lobbying. It's straight-out salaries unless there are express gifts made to particular Congressmen.

We also endorse the threshold of having a required number of lobbying contacts, 13 by 1 person, or 7 by 2 or more people, in addition to a financial threshold. The double requirement concerns only the situation where an organization is in fact using a couple of people on a steady lobbying basis and not just the situation where you simply have a money requirement and you really don't have any paid lobbyists doing their work on any consistent basis. Again, this is line-drawing, but it seems to me that is the name of the game in this bill, to come out with a result which is not too

onerous so that small organizations will not feel overwhelmed and yet tells us something at the end of the process.

There are two points which have been alluded to in Congressman Edwards' and Congressman Railsback's testimony. These points are not in H.R. 81 but since they are obviously on everybody's mind we would like to discuss them.

One is indirect solicitations and one is contributor disclosure. Last year's House-passed bill would have required detailed reporting by a registered organization of solicitations made to 500 or more persons to persuade those individuals to lobby their Congressman or Congresswoman to support or oppose a bill. The proponents of that measure point out—and it's been pointed out today—that major lobbying organizations spend substantial amounts of money on grassroots lobbying and that to ignore reporting of that aspect is to ignore the greater part of the process. The earlier bills would require identification of the issues as to which grassroots campaigns were launched, the means used, the number of individuals or organizations approximately solicited, and in the case of advertising, the media outlets and amounts of spending.

Now in our view there can be little doubt that some reasonable amount of information about grassroots solicitations will add immeasurably to the overall usefulness of the law's disclosure requirements, so we continue to support in this Congress, as we did in the last, a solicitation reporting provision.

We have, however, had extensive consultation with outside groups. As a result of that, we would endorse or suggest for the committee's consideration a much more limited reporting provision about those indirect solicitations. We would indeed be satisfied if it required only the issues on which indirect solicitations had been used and the total expenditures involved in any quarter. That would be sufficient and we would also suggest a higher threshold for any kind of reporting of indirect solications.

We mention in the testimony the range of $40,000 to $50,000 and, again to clarify a point, we would require such reporting only in the case of an organization which meets the initial threshold for direct lobbying.

We suggest these concessions out of an awareness that civil liberty organizations do consider indirect solicitation to be on the cutting edge of protective first amendment freedoms and more practically, we would not like to see a solicitation provision again become a focal point for rallying sufficient opposition to defeat the entire bill.

On a second point, the House-passed bill last year required disclosure—but only by range of contributions of organizational contributors, not individual contributors—by organizational contributors of over $3,000 if the contributions were used in whole or in part by lobbying and if the organization devoted 1 percent of its revenue to lobbying activities. We would support such a requirement again but suggest the floor be raised even higher so that the organizational contribution would have to be $5,000 and in our enforcement provisions we would adopt a suggestion for an in camera proceeding whenever a case might get to court that would require any kind of public disclosure of the organization's contributors.

I would like, because I recognize that Congressman McClory was quite interested, to spend a minute or two on the enforcement provisions The Department of Justice, again after extensive consultation with our own criminal division and with outside groups, does suggest some substantial changes in the enforcement mechanism.

Our first one is that we do away with the criminal penalties altogether. It's come to our attention that many small organizations who may be subject to the law, rightly or wrongly, fear criminal proceedings based upon inadvertent mistakes or omissions in compliance. Because a lobbying reform law, such as H.R. 8, focusing on first amendment protected activities, would be a major innovation—the emasculated 1946 law depended entirely on criminal sanctions, a dead letter in practice—and because we believe such a law can be effectively enforced by civil sanctions, we propose to abandon criminal penalties altogether, and we have consulted with our enforcement sections and they believe that as well.

To handle the extreme cases of recidivist violators or the flouting of the statute by knowledgeable and sophisticated corporations, who may regard its sanctions as a cost of doing business, we suggest a relatively high upper limit on the civil penalties that can be assessed, that is $100,000. To protect less affluent or sophisticated organizations, the court, before imposing a penalty, would be required to consider the nature and circumstances of the violations, and the impact of the penalty on the organization's ability to engage in lobbying communications.

As you know, H.R. 81 would provide a "knowingly" culpability standard for the $10,000 maximum civil penalty, with a "knowingly and willfully" standard for the felony criminal violation. We would retain the "knowingly" standard for civil penalty, but we also suggest the provision of an affirmative defense for a violator who could show that he had a good faith and reasonable belief in the legality of the conduct constituting the violation. The "knowing" culpability standard coupled with this affirmative defense should provide satisfactory protection for the relatively naive organization which does not intend to violate the statute or which believes that the act may be unconstitutionally applied.

Since we would abandon criminal penalties, we need to provide for a means whereby evidence of a civil law violation can be gathered short of the normal discovery obtainable only after the filing of a civil suit. Otherwise, the reputation of an organization could be unnecessarily damaged by the Government's filing of a civil suit without its first being able to ensure whether or not there is sufficient evidence to constitute a violation. We therefore recommend that the Government be authorized to obtain prelitigation discovery by the use of civil investigative demands. We have supplied the subcommittee staff with a draft of a suggested CID provision modeled on the Antitrust Civil Process Act, and the racketeer influenced and corrupt organizations statute.

Under our amendment—and this is something which we are willing to debate and discuss extensively with the subcommittee because we want the right kind of enforcement procedure that does not make the law a joke but does not in any way bring down unnecessary problems for smaller organizations who may be inadvertent violators—these CID's would be issuable only against orga-

nizations subject to an investigation under the statute; or any officer, director, employee, or retainee thereof. They could be issued only after the Department of Justice has facts or circumstances which reasonably indicate that a person may be in violation of the act. They could be issued only with the written approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant or Deputy Assistant Attorney General; and they could be issued only to obtain documentary material. We further provide for the preenforcement judicial review of CID's and for the safe custody and legitimate use of material obtained by the the investigative demand.

We are somewhat apprehensive about the provisions of subsections 8 (a), (b), and (c) of H.R. 81, requiring notice and informal methods of conference or conciliation before the bringing of a civil action; we do not think judicial enforcement of the statute should be barred solely because the violator, no matter how willful, agrees to come into compliance. That could effectively render the statute unenforceable, since a violator could remain in violation until the last moment before the judicial imposition of a sanction, and then agree to obey the statute again and again.

We think that the purposes of the conciliation provision can be better served by a provision which requires the Attorney General to report to the alleged violator at least 30 days prior to the bringing of a civil action, specifying in what respects compliance with the statute is deficient and offering to discuss the deficiency.

Finally, H.R. 81 would give the Comptroller General the duty to prescribe rules and regulations interpreting and implementing the law, which regulations would presumably be binding in the executive and the violation of which could lead to the imposition of a civil penalty. From a constitutional standpoint, we are uncomfortable with the grant of final rulemaking authority, an executive function, to an official who is not a member of the executive branch. We propose a reformulation which has the Attorney General promulgate such rules, after consultation with the Comptroller General. We also firmly believe that those rules and regulations cannot constitutionally be subject to the one-House veto intended by section 10 of the bill, and therefore we recommend the deletion of that portion of the bill.

I think, Mr. Chairman, I will just conclude with a brief reminder that our lobbying law for 30 years now has been an embarrassing joke. When we all go out to home towns all around the country people suggest what is the abuse, what is the concern, that brings this law on. Personally, I find a great deal of cynicism out there in the country about the effect of lobbyists, whether or not those people who live out there ever come to Washington and look at the lobbying registration statement. I hear persistent comments like "that's one thing we never do anything about"—the influence of the lobbyists. The lobbying industry has grown into a multimillion dollar enterprise with no effective disclosure or reporting oversight. I believe this administration and Congress can do better than that and that it is possible to require disclosure of lobbying organizations and expenditures without infringing first amendment guarantees. We in the Department of Justice pledge to administer the law

in a way that will ensure full freedoms for first amendment organizations and minimize paperwork burdens.

We believe, finally, the American people do have a right to know what are the significant economic organizational influences brought to bear upon the workings of their national legislature.

Thank you.

Mr. DANIELSON. Thank you, Ms. Wald. I will recognize Mr. McClory of Illinois first, and I hope we can all try to stick to the 5-minute rule.

Mr. MCCLORY. I'm going to be very brief. You have made a very eloquent and very impressive statement. I appreciate the thoroughness of the analysis that you have made and your recommendations. I particularly want to applaud the Department of Justice for recommending the elimination of criminal penalties but I did raise some questions of Mr. Edwards about the subject of CID's. I do have some serious questions about that, but I don't want to engage in a detailed colloquy. I just have a strong feeling that approach could result in some very serious abuses if it were employed against a suspected organization, for instance a church organization or other private organization. It could result in the disclosure of membership, and contributions; it could be a very serious violation of first amendment rights.

Even your suggestion of certain evidence being received in camera doesn't reassure me very much because I have serious doubts about how secret the proceedings in camera are. However, I'm anxious to work with you in the course of the coming weeks. I hope we can resolve these differences and come up with something which, as you say, will result in a responsible public perception, in my view an erroneous perception overall, of the functioning of lobbying.

Ms. WALD. Congressman, we would be delighted to work with you and the other members of the committee. This is an enforcement scheme which we really agonized over and tried to draw the line between not coming down like gangbusters but having something that has some effective teeth in it.

If there are other protections which you might think were useful, if there are alternatives, we certainly want to work with you and other members of the committee, and we would be delighted to talk with you at great length about them.

Mr. MCCLORY. Thank you. I just want to make this one last comment. You indicated you were not certain about this having a chilling effect, yet I have had contrary experience with the financial disclosure requirements in State legislation. It has resulted in discouraging countless numbers of highly qualified individuals from accepting appointments even on advisory committees. Similarly, I know that the Federal campaign legislation which requires reporting of contributions has discouraged many, many people from making a contribution who just don't want to have their identity publicized for participating financially in a political campaign. So there is, in my mind, strong evidence that these reporting requirements are not as innocent and unobtrusive as they may seem. They have a very distinct chilling effect on citizen participation.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. McClory.

Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman.

Ms. Wald, I welcome you. Your testimony has been very helpful, but I have to very candidly worry about the CID. I have stood behind this bill for two successive Congresses and I intend to this Congress, with some additions to it I hope, but I really worry about the CID process.

I think that it could and I think it would be very obtrusive and I think it would cause some serious concern here and I think the very institution of it—and I worried a little bit last year about making criminal penalties—the very institution of this process I think would indicate that we have some bone to pick with lobbying. It transforms a matter of information into an adversary and perhaps not only an adversary procedure but almost an implication that we think lobbying is unpure or is somehow illegal and I would have some concern about that.

You make mention here of information that the voting public could obtain from reports on file on organizations which have crossed the threshold. What information could they gain from that that they could not gain from a scrutiny of the reports that we, members and candidates, have to file already?

Ms. WALD. Well, I start out with an admission that perhaps I don't know in great detail what's included in your report, so let me start from the other end of the spectrum and say under H.R. 81, with or without the amendments we proposed, they would find out which organizations conducted a minimum amount—by minimum, I mean the threshold amount—of lobbying on which issues and how much they spent in terms of salary and which issues those were. That I think tells them in one place if somebody wanted to look and find out on a particular bill who exactly had been very active on any bill. Under the powers of the Comptroller General here, actually under his obligations, there would have to be cross-indexing and cross-filing of all lobbying reports by issue. So I would go and look at an abortion amendment or lobbying law reform and get my general information. I don't know whether or not that would be possible with the statements that the Congressmen file or whether I would have to thumb through all the various Congressmen's reports to see where and what happened on a particular issue.

I agree not too many citizens are going to be allowed to take advantage of this simply because of where they are. But the fact remains that when the smaller organization, which we are very interested in protecting, comes to do its own lobbying, it's going to be a lot more effective if it can find out who some of the other major players are. The press and investigative reporters will use these reports as a major source of data and that is, in the final analysis, where most Americans are going to find out about what's going on, through publications like Time magazine, et cetera. This law is going to provide the information in one place.

I don't honestly believe most of the major organizations which conduct a lot of lobbying to protect their own interests and have a right to do so, are going to stop doing it, and I also don't think—and I could be wrong—I don't think a lot of the small public

interest organizations who are very much out in front—Friends of the Earth, Environmental Defense Fund will be deterred either—it's pretty clear where they stand on most issues, at least the ones I'm acquainted with, so except for the onerousness of reporting requirements which we have attempted to relieve, I have some skepticism that it's going to chill their lobbying.

Mr. MAZZOLI. What is your position—you may have said so in your statement and I overlooked it. What do you feel about regional or territorial exemptions?

Ms. WALD. We support what is in H.R. 81. We have not suggested any amendments on this point. The present bills definitely have the Senatorial exemption for one's Senators and have the Representional exemption where an organization has its place of business in any part of the particular Representative's district.

Mr. MAZZOLI. Thank you, Ms. Wald.

Mr. DANIELSON. Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you very much, Ms. Wald, for a very constructive statement.

Just to reflect a bit on the early part of your statement, you reminded us that this proposed legislation as exemplified in H.R. 81 doesn't prohibit anything. I believe, to use your words, it prohibits nothing. It calls for reporting and so on. We have had in the law, I believe since 1897 or 1898, the prohibition on lobbying by the executive branch.

I wonder what would be your response to the question, then, why not include reporting of the executive branch lobbying?

Ms. WALD. Well, I have a few comments, Congressman.

The first is that the interpretations which I have seen of the prohibition against the use of funds appropriated to the executive branch for the purpose of lobbying—the legal opinions I have read on that—suggest that direct communications between the executive and legislature as part of the legislative process along the lines Chairman Danielson suggested are not included.

What it does include is any form of going out in the grass roots and drumming up solicitations and I know, at least in my department, we honor that prohibition. God knows, in many cases it would be a lot easier if we didn't; but we do not engage in any drumming up of or asking other people to go to their Congressmen, et cetera. We scrupulously avoid that, but that particular provision, according to the legal opinions I have read, does not include the kind of normal intercourse that goes on between the executive and legislature.

As far as including it in this bill, I think we would not be in favor of that for many reasons—I think we would get into a fundamental question of separation of powers in the entire process. Second, there's no question that this particular bill is geared toward pressures from the private sector. It would make no sense to apply its term to the executive. We would have to sit down and draft provisions which were geared toward the whole executive-legislature process, but I think that would take an enormous amount of careful study to make sure you were not moving into a constitutional sphere of separation of powers.

The executive and legislature—legislation begins years before a bill finally sees light—join in consulting, drafting, et cetera, and I

think it would be extremely hard to try to push them into one of these squares that more naturally apply to outside pressures coming in. So at this point we would be against it.

Mr. KINDNESS. I view the affinity between the public, our constituents, and the legislative branch as being even more important than the affinity between the executive branch and the legislative branch. So, we differ somewhat in that respect, I think the reasoning you have applied would apply just as well to another other side of the picture; that is, the necessary communication between the legislative branch and the public. I think I'd be remiss if I didn't at least show that every argument involved there is practically the same when we're talking about communications that occur between the public and the executive branch.

But to move to a more technical point, in two of the bills before us, there is provision that is in both H.R. 81 and 1979, exempting certain travel expenses from the reporting requirements. This would allow an organization to not report transportation costs and per diem amounts even though those expenditures were for the purpose of bringing people to Washington, perhaps in large numbers, to lobby. I wonder if you would care to comment on whether there's any position of the administration or of the Justice Department on that exempt travel expense provision, and how it can be justified in the lobbying disclosure bill.

Ms. WALD. Well, I believe that some of the amendments which we have submitted suggest that the reporting as well as the registration should be limited to salaries and in that case that would not include travel expenses—not include telephone and overhead. As I said earlier, it is essentially a tradeoff, a balancing between so-called full disclosure and the business of putting too many reporting requirements on organizations. In other words, I think what we are all looking toward is something that organizations can fulfill, can report without a great deal of burden, but at the same time gives you an overall picture. You will lose something by that. You're absolutely right. You will lose a big chunk of travel expense or a big chunk of long-distance expense. It's a tradeoff. Although we start off on the side of simplicity of reporting, certainly if the subcommittee or the committee decided to go in a different direction, that would be their privilege.

Mr. KINDNESS. I tend to agree with the proposal you're suggesting on behalf of the Department.

Ms. WALD. We just can't get perfection in this kind of legislation and I think what we want is something that is informative and not burdensome.

Mr. KINDNESS. In another area, the record keeping sections of H.R. 81 and H.R. 1979 require an organization to keep relevant records for a period of 5 years. In H.R. 2302 the period of record keeping is 3 years. The provision in the other two bills reflects the 5-year statute of limitations on criminal prosecutions under 18 U.S. Code Section 3282. If there's no provision for criminal penalties, as recommended by the Department, would you care to comment on whether a 3-year period of record keeping would be adequate or reasonable?

Ms. WALD. I will comment in just a minute, if you will let me consult. We would have no objection to that; no, sir.

Mr. KINDNESS. I did note one disturbing element in your statement, that I would like to give you an opportunity to clarify. That was, in an early part of your testimony, you indicated that with the passage of legislation such as H.R. 81, we would begin to find out about the abuses. We haven't had a mechanism for doing that. That was the gist of your testimony. I detected a basis for some concern that this may be the first step, and then when we get adequate disclosure we can go on from there to do more in this area. Is that specifically contemplated by the Department at all?

Ms. WALD. No, it is specifically not contemplated by the Department and the Administration. If my use of language created a misimpression, I apologize.

I think that we propose and support a lobbying bill this year which we believe draws the right balance for all time unless history and evolution shows we missed something terribly dramatic. It is not in any way a phase-in or first step. I think that is the agonizing part of the process, drawing those lines, and once we have drawn them, if Congress agrees with us, unless some entirely new, unpredictable abuse shows up which hasn't shown up in the last 30 or 40 years, we would not contemplate moving in any other direction.

Mr. KINDNESS. I thank you. Then, if I understand correctly, the Department suggestions by way of amendments have not been reduced to writing or submitted.

Ms. WALD. They have been reduced to writing and submitted to the staff. They got them yesterday, so I'm sure they haven't had time to circulate them and they are, I should say, the basis for a dialogue. We hope that you and other Congressmen will talk to us and give us your suggestions. They are an attempt to incorporate into writing the elements which we have talked about in the testimony.

Mr. KINDNESS. Mr. Chairman, I would like to know why they weren't supplied to us today.

Mr. DANIELSON. Well, I don't know. I didn't get here early enough to get them along with my other papers.

Ms. WALD. That's probably our fault because we didn't get them to the staff until late yesterday and we got them up here as the embodiment of our testimony in amendment form and as a basis for further discussion. We will be glad to supply them.

Mr. DANIELSON. If the gentleman would yield, I can assure the gentleman that you will get them as quickly as I get them. I haven't received them myself. They are available for inspection. We are going to need them for markup.

Mr. KINDNESS. I thought it would be helpful to see the language at this point.

Mr. DANIELSON. Will the gentleman yield? We still do not have a bill against lobbying between the executive and legislative branch, so I guess I can almost guarantee we will have some more communications.

Mr. KINDNESS. Thank you, and I yield back the balance of my time.

Mr. DANIELSON. Thank you, Mr. Kindness.

Thank you, Ms. Wald. I'm not going to keep you very long but apropos to the last comment, it's my recollection that although the Constitution places the legislative power in the Congress, it is not possible for the Congress alone to create a law.

Ms. WALD. That's correct.

Mr. DANIELSON. A law must bear the signature of the President, or his veto plus passage over the veto. So a legislative act by the Congress alone is a truncated thing. It cannot be a law and I think it's implicit that there should be an exchange at least, a thorough exchange of information between the two branches of Government.

Ms. WALD. I think there are two further points in terms of the executive so-called lobbying. One is that the appropriations, the congressional oversight over appropriations of executive agencies does give it a handle in terms of how we spend our money and a chance to investigate and put on the record any areas which they feel particularly apprehensive about, and I suppose the other thing is that the executive is still a political branch subject to the will—its heads are subject to the will of the electorate if they go too far.

Mr. DANIELSON. That is correct, and although there is a good deal of public feeling that there should be some type of law requiring disclosure in lobbying and although there's a lot of public displeasure with Government, I have yet to run into very many who wish Government to be destroyed.

Ms. WALD. Not while it's giving out money.

Mr. KINDNESS. Will the chairman yield on that point?

Mr. DANIELSON. Yes.

Mr. KINDNESS. I wouldn't want to be characterized as one who seeks to destroy government. Again, I would remind the chairman and Ms. Wald that the stage has been set by each of them that we are not talking about detracting from or destroying, but only how much of the taxpayers' money is being spent in this manner.

Mr. DANIELSON. We don't have to quarrel. I think it's more fun than real. The last thing I want to point out is I'm just trying to gather information which we could use in markup obviously.

One thing we should bear in mind is that the lobbying community, the commercial lobbying community at least, is a very, very important part today of our legislative process. Those who occupy elective or appointed positions must disclose practically down to the point of being embarrassed now and then, but nothing is required effectively of the lobbying community.

I served for a number of years in the California legislature. I can't speak for others, but out there the lobbying community is so effective that it's commonly referred to as The Third House. You just simply can't get anything through the legislature unless you have the concurrence of all three houses. So while that's not a matter of law, it's a matter of fact, and I think I can take notice of it. I don't think that lobbying has reached that degree of efficiency in Washington. It's greater in extent but not probably in effectiveness. But a third House as in Sacramento could become a third House in Washington very easily and as issues become more complex, more difficult to comprehend, I think the danger increases.

Ms. WALD. And all we want to do is know who lives in that third house.

Mr. DANIELSON. All right. That's fine. That's a good point on which to stop. I thank you again, Ms. Wald, and you, sir, for your help.

We do not have our next meeting scheduled. It will be very soon and notice will be given adequately in time, probably next Wednesday.

Without more, the subcommittee will not adjourn.

[Whereupon, at 1:30 p.m., the hearing was adjourned.]

NATIONAL LEAGUE OF CITIES,
Washington, D.C. April 9, 1979.

HON. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations
Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is our understanding that your Subcommittee will begin April 10 to markup H.R. 81 and H.R. 1979 relating to regulation of lobbying activities. The National League of Cities would like to express its opposition to provisions of the legislation which would place disclosure requirements on state and local public officials and their interest groups.

We think it unnecessary to make disclosure requirements of state and local officials because their activities are already open to public purview. The Board of Directors of the National League of Cities consists primarily of elected officials who meet in public, who give public notice of their meetings, who periodically stand for election, and who continually must account to their constituents. In addition, activities of NLC are regularly published in Nations Cities Weekly which has a national circulation of over 30,000. No valuable purpose is served by further disclosure requirements; they only create more paperwork and burdensome costs.

You are no doubt familiar with California's Political Reform Act of 1974, which makes heavy disclosure requirements of local elected officials and their representatives. The cost of the State bureaucracy needed to administer that law exceeds $5 million annually but that does not count the time and costs to elected officials and public sector lobbyists who must comply with it. It is questionable as to whether the disclosure requirements of that law that relate to public officials give the citizenry any additional information about their activities; it is needless to extend such requirements to a national level.

We ask that your Subcommittee delete provisions of the legislation that relate to State and local officials and their interest groups.

Sincerely,

ALAN BEALS, *Executive Director.*

cc: Members of the Subcommittee

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
WASHINGTON BUREAU,
Washington, D.C., Apr 10, 1979.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives Washington, D.C.

DEAR MR. CHAIRMAN: The National Association for the Advancement of Colored People is a membership organization that has through the years leaned heavily on the voluntary efforts of its members to achieve the progress it has for the Black community. It is greatly concerned about a number of the provisions of H.R. 81 that it feels would have an adverse impact on volunteer-supported organizations such as the Association. It feels that the bill was drafted with well-financed organizations with adequate resources and sufficient paid personnel in mind and that it failed to recognize special problems of membership organizations composed of and representing less affluent segments of the population.

For this reason the Association will support, when they are presented, amendments to the bill that will have as their objective eliminating or modifying what we believe are some of the more restrictive features of H.R. 81.

We urge removal of all criminal penalties from the bill. We do not expect the Association to engage in any criminal activity, but we do know that the existence of criminal sanctions will have an inhibiting effect on our members who might otherwise engage in legislative activities.

We ask that the provision requiring reporting the names of directors be deleted. Our organizational experience has led us to conclude that disclosures can subject

persons thus identified to political, economic, societal and even physical reprisals. Such threats should be eliminated with respect to nonprofit organizations.

It in our belief that the inclusion, under the definition of "lobbying communication", of communications to members of the executive branch to influence investigations will seriously hamper civil rights organizations. The NAACP and others promoting equal rights are constantly in touch with federal agencies to secure their compliance with civil rights laws by initiating, intensifying or properly conducting investigations of denials of civil rights. To be required to keep track of and report every such contact would impose a burden that could impede us in fulfilling the Association's objectives.

We support, as do other organizations such as ours, a limitation of the definitions of the term "expenditure" so that only such amounts as are specifically earmarked for lobbying activities would be included. To require analyzing costs of postage, telephone, utilities bills, mimeographing, etc. to determine which portion was spent for the various activities that go into our workload would require more manpower and resources than we or any other voluntary organization would have available. Our primary mission would be thwarted while we pursued the paperwork and red tape that the bill would impose.

Along the same line, we urge amendments that would simplify and make reporting requirements uniform and avoid duplication. Again this is necessary if the NAACP and similar entities are to survive the paperwork flood the bill threatens to cause.

Our officials are often invited to speak or present papers to organizations where we express our views on public issues, sometimes in an effort to obtain support for our position. To require that a report be made on such communications merely because they are not addressed to the general public (as Section 2(9)(B) of the bill does) would be oppressive and have a chilling effect on, if not violate, first amendment rights. We ask that no distinction be made between communications to the general public and those addressed to specific groups within the public.

We support amendment of the attorney's fee provision of the bill to permit the award of fees in the manner authorized in most civil rights laws, so the prevailing plaintiff is normally assured of receiving fees. Otherwise it will be impossible for organizations without abundant resources to contest arbitrary actions of the Comptroller General under the law.

Because we believe the bill raises serious first amendment issues, we urge inclusion of provisions allowing easy and speedy judicial procedures to resolve constitutional doubts.

We will be in further touch with you on this bill. We trust we may also raise with you other matters related to the legislation as it moves through the legislative process.

Sincerely yours,

ALTHEA T. L. SIMMONS,
Director, Washington Bureau.

AMERICAN FARM BUREAU FEDERATION,
WASHINGTON OFFICE,
Washington, D.C., Apr. 24, 1979.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, House Committee on Judiciary, U. S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Farm Bureau believes that H.R. 81, which is identical to the bill approved by the House Judiciary Committee during the last Congress, is the fairest and most reasonable legislation on the disclosure of lobbying activities now before your Subcommittee. We do, however, have some concerns with the provisions of H.R. 81 and amendments that may be proposed.

(1) Farm Bureau opposes provisions which could require the reporting of time spent by retainees or employees in the preparation and drafting of lobbying communications.

(2) Farm Bureau urges deletion of the proposed criminal penalties for violations of the Act.

(3) Farm Bureau does not support any legislation, or any amendment to H.R. 81, that would impose any requirement for the reporting of "grass roots" solicitations.

(4) Likewise, Farm Bureau does not support any effort to require disclosure of the identity of contributors.

Legislation requiring public disclosure of lobbying activities should not inhibit the rights of individuals to express their views, nor should it require undue and burden-

some paperwork and recordkeeping. Farm Bureau believes that, with minor changes, H.R. 81 could be a fair and reasonable reform.

Sincerely,

JOHN C. DATT, *Director,*
Washington Office

cc: All Subcommittee Members

AMERICAN MEDICAL ASSOCIATION,
Chicago, Ill., Apr. 4, 1979.

Re H.R. 81 and related lobby reform bills.

Hon. PETER W. RODINO, JR.,
Chairman, House Judiciary Committee,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN RODINO: The American Medical Association would like to take this opportunity to submit its comments for the record regarding H.R. 81 and related lobby reform bills, the subject of hearings held recently before the House Subcommittee on Administrative Law and Governmental Relations.

H.R. 81, the "Public Disclosure of Lobbying Act of 1979," and similar bills would define those organizations, activities and relationships which would be regulated as lobbying. H.R. 81 would establish substantial recordkeeping and reporting requirements to be met by lobbyists and organizations engaging in lobbying activities directed at either the Legislative or Executive branch of government. The bill would also establish civil and criminal penalties for violations, with the U.S. Attorney General responsible for enforcement.

We have been following the debate on the lobbying reform bills in the last several Congresses and the issues that have been raised by various individuals and organizations. We believe that it is important that we comment on the following lobby reform and disclosure issues.

Compulsory disclosure rules. Disclosure provisions in any bill regarding personal and organizational alliances and activities, and lobbying expenditures, are considered acceptable under our Constitution only if they do not diminish the fundamental rights to privacy, free association and expression guaranteed to every citizen.

Overbroad lobbying controls would have a devastating effect on interest group funding, as well as a "chilling effect" on the exercise of First Amendment rights by many individuals and groups because of the fear of defamation by innuendo or simple drowning in the rising sea of regulatory paperwork.

Disclosure of lobbying expenditures may be information that should be available for the purpose of monitoring lobbying activities. However, requiring disclosure of such items as sources of funding, grass roots contacts, and descriptions of the issues on which an organization has spent a "significant amount of its time" would encroach too much on a Constitutionally protected area. There is no overwhelming public need to know that could justify such encroachment.

Criminal penalties. These provisions too would give individuals and organizations good reason to hesitate in, or decline altogether, the exercise of their Constitutional rights to freely associate and, singly or in numbers, petition their government. Criminal sanctions are inappropriate in this type of legislation, particularly since the somewhat amorphous standards proposed would be enforced under the broad language of Title 18 of the United States Code.

To minimize the "chilling effect" that penalty provisions inevitably have, two things must be crystal clear in any lobby reform legislation: (1) delineation of that conduct which is prohibited or required, and (2) the penalties attendant to each failure to comply. These elements must be explicit and simply understood in any lobby reform bill enacted by Congress.

Paperwork. Registration, recordkeeping and reporting requirements placed on both lobbying entities and government under these bills would be substantial, adding yet one more expensive regulatory burden that would discourage individuals' attempts at participatory government.

If this Committee is genuinely concerned about those forces gaining undue influence in our governmental processes, it would do well to examine the impact of overbroad regulatory schemes and the "influence" they wield in the conduct of both private and government business.

The AMA has one particular concern with the language of H.R. 81 that relates to affiliate groups. Though the AMA is often perceived as a national organization with control over all state and county medical associations, it is, in reality, a federacy. As a federation, the AMA exercises no control over constituent state medical associ-

ations or component county medical societies. Thus, for the purposes of these bills, the definition of "affiliate" needs to be reworded.

In conclusion, we would urge the Committee to bear in mind that these proposed regulatory measures are directed at controlling, in varying degrees, activities which constitute fundamental Constitutional rights and which are essential ingredients of the democratic process. With astute reform that focuses on clarifying and simplifying these controls, the Committee can serve the mutual ends of Congress and politically active organizations and individuals.

The right to join together to petition Congress for the redress of grievances is basic to our system of government. The fact that people do join together to voice their concerns in areas of mutual interest is evidence of the success of our democratic processes and should be encouraged. Regulatory proposals that could inhibit the exercise of this right of free expression should be rejected.

We believe that this Committee and Congress should approve lobby control legislation that has the minimal requirements needed to protect against abuse, but does not establish a surveillance program with extensive red-tape, wide latitude for bureaucratic interpretation, and criminal penalties for perceived violations.

Sincerely,

JAMES H. SAMMONS, MD.

ADDENDUM FOR THE HEARING RECORD ON H.R. 81 LOBBYING DISCLOSURE LEGISLATION SUBMITTED BY: AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN UNIVERSITIES, AND NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

We are writing to urge the House of Representatives to include a provision in any lobbying disclosure legislation it may enact that would declare that any contact made with any Member of the House or Senate, who is part of the state delegation in which a college or university is located, not be considered as a lobbying contact. Only in this way can the Congress be assured that such legislation will not weaken the Constitutional protection of the First Amendment, nor create a chilling effect, limiting the necessary communications between the citizenry and the Congress.

A former Member of Congress, deservedly respected for his insightful wisdom, recently responded to a comment that the Congress should provide more leadership to the Nation by saying: "That is not the way this country operates. Essential leadership must come from the White House. Congress fulfills its responsibility best when it keeps the country moving forward without tearing itself apart."

The House Judiciary Committee considers again during the 96th Congress the question of how best to proceed on the issue of having lobbyists disclose their activity so that the citizenry can be aware of who is influencing legislation in those areas where such awareness is considered essential in the democratic process. The constant and overwhelming problem is one of balance. This problem is one faced continually by the Judiciary Committee, which is responsible on the one hand for the protection of privacy of the citizenry and, on the other hand, for the guarantee of freedom of information to the same body politic. Properly balanced these two seemingly paradoxical objectives can be worked out.

In the interest of obtaining information concerning who is lobbying in what legislative areas and how that lobbying is being conducted, the Congress is beset with a question of a fundamental constitutional right: the right of the citizenry to redress grievances through direct communication with their representatives in the Congress. Supporters of lobbying disclosure legislation have acknowledged this need for balance by proposing that contact with the two Senators from the state and a single member of the House of Representatives from the district of the lobbying organization be excluded in weighing lobbying contacts. However, from the point of view of higher education institutions, permitting contacts with three Members of Congress would not be sufficient to protect the basic right guaranteed by the First Amendment of the Constitution. Generally, the amount of contact with Members of Congress by an institution of higher education is commensurate with the range of concerns and complexity of organizations of that institution.

A major state university, for example, enrolls students from every congressional district in the state, has units of its institution—branch campuses, medical schools, veterinary schools, specialized research centers, etc.—located in many portions of the state. Its agricultural research activities and extension work may touch every county in the state and probably every congressional district as well. In short, such a university located in any state serves the total state and has legitimate interests in every aspect of the total state's activities, activities which are and should be of concern of the entire state congressional delegation.

It is the understanding of this real situation confronting higher education and comparable state based organizations that lay behind the reasoning for the state delegation exemption in S. 2971. It was the presence in the bill of this exemption that repeatedly was pointed to in the text accompanying the introduction of that bill to prove that First Amendment rights would be taken into proper account.

It is meant to note that the curse of contemporary federal bureaucracy and one great problem undermining federal regulatory activity may be summarized with the word "inadvertence." Even when the Congress clearly understands what it wishes to accomplish, the necessity for general language in legislation presents an opportunity to well-intentioned regulators in the federal agencies to pave the road to Hades for the regulated by insisting on paperwork, reporting, and standards that are plainly absurd and overreaching to any common sense evaluation. Still, there are almost inevitable consequences, given the bureaucratic mind that takes every task to its tortuous and miserable ultimate end. The results are too well known to the Congress and members of its committees to describe in needless detail. This committee, because of its special concern for the nature of a law-abiding society in the United States, is aware that one implication of inadvertent, unreasonable extension of the law is a weakening of respect of the law itself. Who cannot name a half dozen laws affecting public safety, the environment, public health, and other areas of appropriate federal activity that are now blatantly violated by the citizenry at-large or large segments of the citizenry, not because we have become a lawless nation, but because the ultimate implications of the law itself or the freedom for regulators to carry things to extreme have resulted in inadvertent irrationality. Frequently reason can prevail only as a result of the obdurate stand of those who refuse to follow the law or regulations. It is not a healthful state for our society.

The question before the House Judiciary is precisely what problems or concerns exist that requires a lobbying disclosure law to solve or alleviate. We do not believe that the communication of presidents of universities to a Member of the Congress from his home state who may live three miles from the campus and, therefore, be out of the district in which the campus is located, but who has intense concerns with the welfare of that university should be considered a lobbying contact. Furthermore it is our feeling that the disclosure of such communication, with all its accompanying paperwork and efforts, is unnecessary for the well-being of the nation. The exemption of contacts for the total state delegation would allow for sound communication between elected officials and the constituencies they are obligated to represent, and would strengthen rather than weaken the objectives of the lobbying disclosure legislation.

U.S. HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, D.C., Apr. 12, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to your Subcommittee's consideration of H.R. 81 and related bills providing new proposed lobby disclosure legislation to replace the present Federal Regulation of Lobbying Act of 1946.

It is my position as Clerk of the U.S. House of Representatives with the current responsibility for the administration of the present law, that in the event the Subcommittee determines that the point of entry for required reports and statements should remain in the Congress itself, it would be in the best interest of economy and efficiency that any new lobby disclosure law provide a single place of filing with the Clerk of the House. This would eliminate the duplication of reporting that exists under the present Federal Regulation of Lobbying Act of 1946 and would also foster continuity in transition to administration under the new law.

I have taken the liberty of informally discussing this method of handling lobby reports with Mr. J. S. Kimmitt, Secretary of the Senate, and he personally feels that this would be an effective and efficient procedure. Of course, prior to action or consideration of this matter by the Senate, the Secretary is unable to represent the position of the Senate with respect to a single congressional point of entry for lobby filings.

It should be noted that should the Subcommittee decide to devolve the administrative duties incident to a new lobby law upon the Clerk, the information filed with the Clerk would be made available to the offices of the Senate upon request at any time.

Thank you for your consideration in this matter, and if my office can be of any further assistance, please do not hesitate to contact me.

Sincerely,

EDMUND L. HENSHAW, JR., *Clerk,*
U.S. House of Representatives.

U.S. HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, D.C., Mar. 14, 1979.

Hon. George E. Danielson,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you as supervisory House officer under the Federal Regulation of Lobbying Act in connection with the consideration by your Subcommittee of changes in the current lobbying statute. The purpose of this letter is to familiarize you with specific programs undertaken by the Office of the Clerk in discharging his responsibilities under the present lobbying law and to request an opportunity to testify before your Committee, if you so desire, to present information on these programs which may assist the Committee in its legislative deliberations.

The Federal Regulation of Lobbying Act of 1946 (2 U.S.C. §§ 261-270) charges the Clerk of the U.S. House of Representatives with certain duties relating to the administration of that law.

Specifically, every person receiving any contributions or expending any money for purposes defined under the Act as lobbying activity must register with and file reports on a quarterly basis with the Clerk of the House. [2 U.S.C. § 267(a)].

Every person required to file such reports must first register with both the Clerk and the Secretary of the Senate: ". . . and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included." [2 U.S.C. § 267(a)].

Furthermore, the Clerk of the House is required to notify filers immediately upon nonreceipt of any report required to be filed pursuant to the Act [2 U.S.C. § 265(a)], make any report or statement filed with him available for public inspection [2 U.S.C. § 265(b)] and, in cooperation with the Secretary of the Senate, compile and print reports filed in the Congressional Record [2 U.S.C. § 267(b)].

The Office of Records and Registration, formerly the File Clerk's Office, has been handling the Clerk's duties outlined in the Act since 1946. This office is also responsible for performing certain administrative functions under the Federal Election Campaign Act, the new Ethics in Government Act of 1978, and former House Rule XLIV applicable to Members and employees (Financial Disclosure). This office also provides public access to filings under the International Security Assistance Act of 1978 requiring disclosure of expenditures for official foreign travel by Members, staff and committees and monthly payroll authorizations and certification for all House employees. These filings numbered approximately 53,000 during 1978.

Under the Federal Election Campaign Act, all reports required of candidates for the U.S. House of Representatives and their supporting committees are filed with the Clerk as "point of entry" and are microfilmed, made available for public inspection within 48 hours and transmitted to the Federal Election Commission for review. Pursuant to House Rule XLIV, which was superceded by the Ethics in Government Act of 1978 (Pub. L. No. 95-521), this office developed a computer program and filing form to implement the Rule and subsequently distributed, received and processed reports for 2,800 filers. With the effectiveness of the Ethics in Government Act, new computer systems and forms were designed by this office to accommodate the expected increase in coverage (i.e., candidates for the U.S. House of Representatives and certain employees of the Library of Congress, Architect Office, Congressional Budget Office, Botanic Gardens and Government Printing Office—approximately 4,000 individuals) as well as the imposition of additional administrative responsibilities. As in the lobby and campaign acts, reports filed pursuant to the Ethics in Government Act are made available for public inspection and copying within statutory time limits. The Office of Records and Registration has sophisticated microfilming and viewing/copying equipment for the express purpose of making reports easily accessible to the public. In the past year there were 3,800 requests to view documents available on microfilm and 210,642 pages of reports received, processed and filmed.

In recent months procedures have been developed by the Office of Records and Registration that allow the Clerk to carry out his responsibilities under the Lobby-

ing Act in a stronger, more effective and more orderly manner. In the past the basic administrative tasks associated with implementing the statute were manual. However, microfilming techniques and Electronic Data Processing programs are now established which speed the process of presenting information filed with this office to the public in a logical and efficient manner.

Every administrative function associated with the Lobby Act has undergone updating. For example, the practice of telephonic notification to filers of omissions or errors on reports has been replaced with formal written notification. In this regard, review of reports filed indicated that the most prevalent omission was failure to provide disclosure of itemized expenditures exceeding the statutory amount as required by Section 264(a)(4) of the Act. This program requires an in-depth review of all reports filed and approximately 2,300 such notifications were sent last year. It is estimated that the response to these notices resulted in approximately 75 percent compliance. These figures reflect a thorough and effective course of action with regard to incomplete filings, particularly in light of the Comptroller General's 1974 audit findings referred to in the report accompanying last year's bill, H.R. 8494:

> The Comptroller General conducted an audit of reports filed with the Clerk in the third quarter of 1974 at the request of the Senate Committee on Government Operations. He found that, of 1,920 reports received, 917—or 48 percent—had not been properly completed. Of those, 129—14 percent—contained incomplete responses to important informational questions.—H. R. Rep. No. 95-1003, 95th Cong., 2d Sess. 54 (1978) (Committee Report).

A computer program has been employed for the first time in 1979 to notify registrants of their upcoming filing requirement, as well as to dun individuals for their failure to subsequently file. In fact, for the Fourth Quarter 1978 Lobby Report of Receipts and Expenditures, due January 10, 1979, 2,225 duns were sent to registrants who failed to file.

In order to accurately implement Section 265(a) of the Act—the notification to filers of nonreceipt—a postcard notification form was developed during 1978. This form was distributed to our 5,000-odd registrants with extremely positive results. The postcard is submitted when the registrant has neither incurred reportable receipts/expenditures nor engaged in lobbying activity during the particular quarter to which the filing pertains. The initiation of this administrative mechanism provided the registrants with an easy method of notifying my office of their status, as well as a means of keeping their records current. The report accompanying last year's legislation refers to the institution of a means of notification where no regulated activity for a given period by registrants has occurred. Committee Report at 30. This has been implemented by this office under the existing statute with the application of this postcard form. For your information, I have enclosed a copy of a notice of omissions and errors, a dun for failure to file, an informational notice written during 1978 to assist filers interested in obtaining clarification of the disclosure provisions of the Act and a postcard form (HLF3).

A more complex on-line computer program is currently being designed for use in 1979 which will: compute total lobbying receipts and expenditures for each registrant by calendar quarter, year and lifetime; cross reference these figures by a registrant's legislative interests and/or type (i.e., law firm, corporation, consulting firm, individual, etc.); automatically receipt reports filed and dun those registrants who fail to file; simultaneously list reports filed, their microfilm location and the date received; cross reference registrants with employers and/or clients; produce on demand, mailing labels and complete address information; and deliver various other internal programs. It is interesting to note that these capabilities appear to be consistent with the cross-referencing and indexing system outlined in the Committee Report. In fact, with respect to the ability to compute total receipts and expenditures by legislative interest and/or registrant type, the system we have designed would appear to surpass in versatility even the system envisioned in H.R. 8494. Once activated, this support system will enable us to contact and track registrants easily plus provide a day-to-day means of monitoring their registration and reporting status. In connection with its ongoing study of administrative requirements necessary to properly implement any new lobbying act, the Committee may want to consider the system that this office has designed, by way of a prototype, for future use.

Over the years, certain deficiencies in the existing statute have been noted by both your Committee and outside groups. In some cases criticism has appropriately been directed at the Clerk for failure to actively and consistently administer the Act. The foregoing efforts represent a recognition of the Clerk's responsibility to discharge his duties under the current law, within its limits, in an efficient and consistent manner.

As the Clerk of the U.S. House of Representatives, and as administrative officer under the Federal Regulation of Lobbying Act, I stand ready to give whatever assistance, expertise and insights which I or my staff might be able to offer to move toward the development of a new lobbying disclosure bill. In this regard, the Comptroller General stated, in hearings before your Subcommittee held on March 7, 1979, as follows:

> We consider reliance on the administering officials for resolution of these problems, rather than on the prosecutive arm of Government, a less intrusive, more amicable, and more effective approach to compliance. But unless the statute provides us some reasonably effective compliance authority, so we can assure the Congress, lobbying organizations, and the American public that the new law has adequate oversight, we strongly recommend that responsibility for administering lobbying disclosure not be placed with the Comptroller General.

In view of the Comptroller's position and the current capability of the Clerk's office, as outlined above, to act as "point of entry", transfer agent and to provide public inspection and copying of filings, your Subcommittee may want to consider devolving the administrative and ministerial functions associated with the proposed lobby law changes upon the Clerk. In any event, I would welcome the opportunity to testify before and work with your Subcommittee in any way you deem appropriate to assist you in consideration of lobby law reform.

With kind regards, I am

Sincerely yours,

EDMUND L. HENSHAW, JR., *Clerk,*
U.S. House of Representatives.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., Apr. 9, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations House Committee on the Judiciary, Washington, D.C.

DEAR CHAIRMAN DANIELSON: On behalf of the membership of the Transportation Association of America [TAA), I should like to express the Association's views on certain provisions of H.R. 81, H.R. 1979, and H.R. 2302, all of which are designed to revise statutes governing the reporting of so-called "lobbying communications" with members and staff of the Congress and, in two of the bills, with policy-level officials in the Executive Branch.

For the information of your Subcommittee, TAA is a national policy organization made up of transport users, investors, and carriers of all modes (air, motor, pipeline, rail, water, and freight forwarder) who work cooperatively to develop national policy positions designed to create and maintain the strongest possible transportation system in this country operating under private-enterprise principles.

Approximately 250 top executives serve on eight permanent advisory panels representing the above transport interests. These panels, aided by pro-and-con background papers prepared by the TAA staff, review policy proposals of TAA members and state their respective positions. If they differ—as is often the case for transport policy issues—extensive efforts are made to reconcile the differences. If successful and all panels either agree to support or not oppose a specific proposal, it is submitted to the 115-member TAA Board of Directors for formal approval. A roster of the Board's current membership is attached to give you an idea of the across-the-board nature of TAA.

Since the presentation of views to the Congress on active legislation is mostly in the form of testimony, statements, and correspondence for inclusion in the record of hearings, much of TAA's implementation activities are excluded from all three bills. We, of course, list all other communications with members of the Congress in quarterly reports now required under lobby reporting statutes.

We have no quarrel with the inclusion of communications with Congressional staff members, provided the exclusion is made of all such contacts for strictly information purposes, as done in H.R. 2302. We are concerned about the inclusion of communications with policy-level officials of the Executive Branch, since we are in continuous contact with such representatives of the Department of Transportation and its various Administrations. While most of these contacts relate to their ongoing programs, it would be very difficult to determine the possible influence that such contacts might have on active or pending legislation. The administrative burden could be a sizeable one. Accordingly, we believe that the scope of lobbying communications covered under the proposed legislation should be confined to the Congressional Branch—as done in H.R. 2302.

Another area of concern is the possible effect that such legislation may have on TAA's relationships with its hundreds of members throughout the country. We try to keep them advised, through a monthly newsletter, of legislative issues of direct interest to TAA. While we do not directly solicit their support in this general publication, we obviously would welcome it and expect it from members on those issues of direct interest. We are not clear as to whether this TAA publication would fall within the scope of reporting requirements of H.R. 81. While we believe it would not be covered by H.R. 1979, we would prefer the wording of H.R. 2302 because it specifically excludes communications with an organization's membership through a periodical or newsletter.

We have no quarrel with most of the reporting requirements, such as identification of a reporting organization and the listing of persons making lobbying communications during a quarterly reporting period, although we would prefer the $5,000 spending guideline in H.R. 2302 rather than the $2,500 in the other two bills. Our major concern in this area is the proposal made in H.R. 1979 that calls for the listing of all members contributing dues to reporting organization of $3,000 or more per year, even if only a small portion of these dues are used for lobbying purposes. In addition to the doubtful constitutionality of such a requirement, we question the legality of being forced to make public what is clearly confidential and private information of a trade association. Such a public disclosure requirement would impose a serious membership problem for an association such as ours, which contains a wide variety of corporate members whose interests in transportation policy matters differ greatly. We do not object to the identification of our members, but strongly urge that any public disclosure of their financial contributions not be a reporting requirement in this legislation.

Because of the difficulty in classifying a "lobbying communication"—despite the attempt to do so in these bills—we also believe it is going too far to impose criminal penalties for violations. The informal enforcement approach should be tried first, and then civil action authorized if this fails.

From the above comments, it is obvious that TAA believes the best bill by far of the three under consideration is H.R. 2302, and we urge that your Subcommittee use it as the basis for legislation to revise our current lobby reporting statutes.

We appreciate the opportunity to present TAA's views on this important legislation, and we request that this letter be made a part of the record of hearings on H.R. 81, H.R. 1979, and H.R. 2302.

Respectfully,

PAUL J. TIERNEY.

Carleton D. Burtt, Executive Vice President
The Equitable Life Assurance Society of the United States, New York, N.Y.

William E. Callahan, President
Kona-Cal, Inc., Deerfield, Ill.

Walter F. Carey, Chairman of the Board
T.I.M.E.-DC, Inc., Bloomfield Hills, Mich.

H. T. Chilton, President and Chief Executive Officer
Colonial Pipeline Co., Atlanta, Ga.

Thomas T. Church, Vice President, Transportation
Bethelem Steel Corp., Bethlehem, Pa.

Lee Cisneros, Director of Corporate Physical Distribution
The Firestone Tire & Rubber Co., Akron, Ohio

Joseph A. Cooper, Senior Vice President-Marketing
Delta Air Lines, Inc., Atlanta, Ga.

Patrick H. Corcoran, Executive Director
Association of Oil Pipe Lines, Washington, D.C.

Henry A. Correa, President
ACF Industries, Inc., New York, N.Y.

Charles E. Coyl, Chairman
General American Transportation Corp., Chicago, Ill.

L. Stanley Crane, President and Chief Executive Officer
Southern Railway System, Washington, D.C.

John A. Creedy, President
Walter Transport Association, New York, N.Y.

Robert H. Cutler, Chairman of the Board
ICX Inc., El Paso, Tex.

Thomas E. Darnton, Vice President-Procurement and Production Control
General Motors Corporation, Detroit, Mich.

William H. Dempsey, President and Chief Executive Officer
Association of American Railroads, Washington, D.C.

James J. Doyle, Executive Vice President
International Harvester Co., Chicago, Ill.

N. C. Dunn, Traffic Manager, Supply Department
Exxon Co., U.S.A. Houston, Tex.

Vernon L. Everngam, Director, Product Transportation
Martin Marietta Corp., Bethesda, Md.

William M. Fairhurst, Executive Vice President
Dana Corporation, Toledo, Ohio

Richard J. Ferris, Chairman and Chief Executive Officer
United Airlines, Inc., Chicago, Ill.

John P. Fishwick, President and Chief Executive Officer
Norfolk & Western Railway Co., Roanoke, Va.

Sam H. Flint, Vice President—Corporate Operations
The Quaker Oats Co., Chicago, Ill.

Charles W. L. Foreman, Senior Vice President
United Parcel Service, Greenwich, Conn.

Jack R. Frost, Jr., Director of Transportation
UNIROYAL, Inc., Middlebury, Conn.

Dr. Gayton E. Germane, 1907 Foundation Professor of Logistics
Graduate School of Business, Stanford University, Stanford, Cal.

David E. Gile, Senior Vice President
Marine Midland Bank, New York, N.Y.

G. Zan Golden, Senior Vice President
North American Van Lines, Inc., Fort Wayne, Ind.

Allan Grant, President
American Farm Bureau Federation, Park Ridge, Ill.

R. C. Grayson, Chairman of the Board and President
St. Louis-San Francisco Railway Co., St. Louis, Mo.

Donald G. Griffin, Vice President-Distribution and Transportation
PPG Industries, Inc., Pittsburgh, Pa.

Frank L. Grimm, Chairman of the Board and Chief Executive Officer
O'Boyle Tank Lines, Inc., Rockville, Md.

Harold F. Hammond, Senior Advisor
Transportation Association of America, Washington, D.C.

James H. Harris, Senior Vice President
The Chase Manhattan Bank, N.A., New York, N.Y.

John E. Harris, Jr., Vice President
Petroleum Supply Division
Phillips Petroleum Co., Bartlesville, Okla.

Richard Haupt, Director, Transportation and Traffic
Ford Motor Co., Dearborn, Mich.

Frank L. Heard, Jr., General Counsel and Director
Exxon Pipeline Co., Houston, Tex.

J. W. Hershey, Chairman of the Board
American Commercial Lines, Inc., Houston, Tex.

Richard D. Hill, Chairman of the Board
The First National Bank of Boston, Boston, Mass.

Eugene Holland, Jr., Executive Vice President
Continental Illinois National Bank & Trust Company of Chicago, Chicago, Ill.

J. Robert Hoon, General Manager of Transportation
Aluminum Company of America, Pittsburgh, Pa.

Paul R. Ignatius, President and Chief Executive Officer
Air Transport Association of America, Washington, D.C.

James E. Isbell, Jr., Director of Transportation
FMC Corp., Chicago, Ill.

George P. Jenkins, Chairman of the Board and Chairman of the Finance Committee
Metropolitan Life Insurance Co., New York, N.Y.

William B. Johnson, Chairman and Chief Executive Officer
IC Industries, Chicago, Ill.

Vernon T. Jones, President
Williams Pipe Line Co., Tulsa, Ok.

Edward G. Jordan, Chairman and Chief Executive Officer
Consolidated Rail Corp., Philadelphia, Pa.

John M. Kinnaird, Vice President-Government Relations
American Trucking Associations, Inc., Washington, D.C.

Jack R. Kruizenga, President
Union Tank Car Co.

James O. Leet, Executive Vice President-Corporate Services
Pan American World Airways, Inc., New York, N.Y.

Richard A. Lempert, Vice President and General Counsel
American Airlines, Inc., New York, N.Y.

Arthur D. Lewis, President and Chief Executive Officer
American Bus Association, Washington, D.C.

Ira O. Lewis, Senior Vice President-Finance
Farrell Lines, Inc., New York, N.Y.

Norman M. Lorentzsen, President and Chief Executive Officer
Burlington Northern Inc., St. Paul, Minn.

James C. Malone, Vice President
Union Carbide Corp., New York, N.Y.

Albert E. May, Executive Vice President
Council of American-Flag Ship Operators, Washington, D.C.

C. James McCormick, Vice Chairman of the Board
Sundance Transportation, Inc., Vincennes, Ind.

Donald L. McMorris, President
Yellow Freight System, Inc., Shawnee Mission, Kan.

James J. McNulty, Chairman of the Board
Emery Air Freight Corp., Wilton, Conn.

Frank L. Merwin, Vice President
ASARCO Inc., New York, N.Y.

Thomas A. Micali, President
Pullman Trailmobile, Chicago, Ill.

Giles Morrow, President
Freight Forwarders Institute, Washington, D.C.

James F. Morse
Seattle, Wash.

Edwin F. Mundy
Harrington Park, N.J.

John A. Murphy, Chairman of the Board
Gateway Transportation Co., Inc., La Crosse, Wisc.

Allen E. Murray, President, Marketing & Refining Division, Executive Vice President
Mobil Oil Corp., New York, N.Y.

Frank L. Nageotte, President and Chief Executive Officer
Greyhound Lines, Inc., Phoenix, Ariz.

John Norton, Director, Transportation & Distribution Department
E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.

Raymond F. O'Brien, President and Chief Executive Officer
Consolidated Freightways, Inc., San Francisco, Callf.

Frank A. Olson, President and Chief Executive Officer
The Hertz Corp., New York, N.Y.

Roy E. Olson, Vice President, Transportation
American Paper Institute, Inc., New York, N.Y.

D. H. Overmyer, President
D. H. Overmyer Co., Inc., New York, N.Y.

Adrian B. Palmer, Chairman
Rollins Burdick Hunter Co., Chicago, Ill.

Michael Papadopoulos, General Manager Transportation and Distribution
Shell Oil Co., Houston, Tex.

Patricia E. Peters, Vice President
Morgan Guaranty Trust Co., New York, N.Y.

V. L. Petersen, Vice President
The Goodyear Tire & Rubber Co., Akron, Oh.

John E. Phelan, General Traffic Manager
Anheuser-Busch, Inc., St. Louis, Mo.

C. B. Ramsdell, Vice President-Group Executive, Railway Products Group
Westinghouse Air Brake Co., Pittsburgh, Pa.

John S. Reed, Chairman and Chief Executive Officer
The Atchison, Topeka & Santa Fe Railway Co., Chicago, Ill.

James E. Reinke, Vice President-Government Affairs
Eastern Airlines, Inc., Washington, D.C.

W. Thomas Rice, Chairman Emeritus
Seaboard Coast Line Industries, Inc., Richmond, Va.

Ronald G. Ross, Senior Vice President-Retired
Bank of America N.T. & S.A., Los Angeles, Calif.

Paul Schuster, Chairman of the Board
Schuster Express, Inc., Colchester, Conn.

Henry E. Seyfarth, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Ill.

Richard F. Smail, President
Union Mechling Corp., Pittsburgh, Pa.

R. R. Smith, Chairman and Chief Executive
Smith's Transfer Corp., Staunton, Va.

W. K. Smith, Vice President-Transportation
General Mills, Inc., Minneapolis, Minn.

Wilbur S. Smith, Chairman and Chief Executive Officer
Wilbur Smith and Associates, Columbia, S.C.

William I. Spencer, President
Citibank, New York, N.Y.

William F. Spitznagel, Chairman of the Board and President
Roadway Express, Inc., Akron, Ohio

Edwin F. Stadelman, General Traffic Manager
J. C. Penney Co., Inc., New York, N.Y.

W. Stanhaus, Chairman and Chief Executive Officer
Spector Industries, Inc., Bensenville, Ill.

L. D. Thomas, Vice President-Operations Planning & Transportation
Amoco Oil Co., Chicago, Ill.

Richard L. Thomas, President
The First National Bank of Chicago, Chicago, Ill.

Robert E. Thomas, Chairman of the Board
MAPCO Inc., Tulsa, Okla.

George F. Tidmarsh, Vice President
Physical Distribution and Transportation, Sears, Roebuck and Co., Chicago, Ill.

Franklin B. Varner, Vice President-Traffic and Transportation
United States Steel Corp., Pittsburgh, Pa.

Charles J. Waidelich, President
Cities Service Co., Tulsa, Okla.

Michael J. Walsh, Jr., Vice President-Transportation and Distribution
St. Regis Paper Co., New York, N.Y.

Hays T. Watkins, Chairman of the Board and President
The Chessie System, Cleveland, Ohio

Edgar O. Weller, Chairman of the Board and President
Frozen Food Express, Inc., Dallas, Tex.

Bennett C. Whitlock, Jr., President
American Trucking Associations, Inc., Washington, D.C.

George K. Whitney, Partner
Massachusetts Financial Services Co., Boston, Mass.

H. Dillon Winship, Jr., Chairman and Chief Executive Officer
Georgia Highway Express, Inc., Atlanta, Ga.

Hugh E. Witt, Director-Government Liaison
United Technologies Corp., Washington, D.C.

NATIONAL RIGHT TO WORK COMMITTEE,
Washington, D.C., April 4, 1979.

HON. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: You will be involved very soon in the Administrative Law and Governmental Relations subcommittee rewriting of lobbying law when you mark-up HR 81, HR 1979 and other lobbying "reform" bills. I write to acquaint you with our views on this subject for your consideration during the mark-up. Specifically I want to give you our opinion of HR 1979, as it is the major proposal before you which is seriously flawed.

Ordinarily the National Right to Work Committee does not, as an organization, take an interest in bills dealing with lobbying reports. And we are not now concerned with any proposal which would increase citizen understanding of or participation in the law making process. However, we believe a careful analysis of HR 1979 will show that it severely restricts and discourages voluntary citizen participation in government. I'm sure this is not your intent, but that will be the effect if that bill is enacted.

We speak from experience since we are one of the largest and most active public interest, citizen organizations. Our entire operation is aimed at informing and activating concerned citizens who share the view that union membership should be voluntary, not compulsory. HR 1979, as now written, would—intentionally or unintentionally—have a severe chilling effect on any organization like ours which represents a large citizen constituency. By attacking the constitutional rights of these individual concerned citizens, the bill would transfer the power to affect legislation from broadly based citizen organizations like ours narrowly based special interest groups.

As you know, we are a voluntary organization working to keep our 1,250,000 members and the general public—and through them members of Congress—informed about compulsory unionism. We have always been completely open and candid about the fact that we contact hundreds of thousands of our members and supporters throughout the country and report to them on legislative developments in Congress. This type of communication with citizen-supporters is the very essence of representative government and citizen responsibility.

The proposed lobby reform embodied in HR 1979 would require private, voluntary, lobbying organizations such as the National Right to Work Committee—involved in highly controversial issues—to expose many of the contributors to harassment (and in our case, probably even to physical abuse) by those who disagree with them. The proposed law would require filing extremely voluminous reports, a burden which would specifically penalize organizations who represent a broad and large constituency. Again, the bill would discourage broadly based citizen organizations in favor of narrowly based special interest groups.

Thus proponents of HR 1979 propose to make our communications with our supporters and associated activities the subject of additional federal regulation. Such government restrictions on any activity protected by the first amendment should be considered carefully to determine if there is a compelling state interest that overrides rights and freedoms of the people. In this light, HR 1979 unconstitutionally encroaches on First Amendment rights of association and speech, and the right to petition the government, of persons who voluntarily join together to oppose compulsory unionism.

We urge you to do all you can to see that these defective provisions are not contained in HR 1979 or any other lobby reform bill for which your approval is sought. Failing that, I urge you to vote against reporting out any such bill for further consideration.

If you have any questions about this issue, Congressman, we are prepared to help you and your staff whenever you call.

Sincerely,

REED LARSON.

[From The Washington Post, Mar. 8, 1979]

LIBERTY FOR LOBBIES

"CASTING MORE LIGHT on lobbying" sounds like a fine good-government goal. But it's the kind of formulation that members of Congress should be wary of as they try once more to rewrite the lobby-disclosure law. This is one of the fields in which openness—meaning broad, detailed, compulsory disclosure—is not at all synony-

mous with free, healthy political activity. Congress cannot push lobby-reporting laws very far without intruding on realms of private association and expression that are beyond the proper reach of government.

A good example is the burgeoning field of so-called grass-roots or indirect lobbying—attempts to influence senators and representatives by stirring up mail, phone calls and visits from people back home. Such campaigns have become so commonplace that lawmakers are constantly being bombarded from many sides. They find it quite discomfiting. They are not always sure how much real political force a barrage of postcards represents. And the recent surge in sophisticated grass-roots campaigns by business and single-issue groups has fed suspicions that lobbies with large bankrolls and extensive mailing lists are gaining undue influence on Capitol Hill.

Should groups that organize indirect lobbying have to report on their financing and activities? That would certainly help citizens and officials find out who is behind these campaigns. But consider what such a sweeping law would mean. Every active group with legislative concerns—including trade associations, unions, universities, charitable societies and citizens' groups—would have to report to a federal agency on its meetings, mailings, advertisements and other issue-oriented activities. Anyone suspected of non-compliance would be subject to federal audits, investigations and penalties.

Talk about overregulation! The paperwork would be incredible. Much more ominous is the whole idea that private groups should be compelled to report on perfectly legitimate communications with their own members, supporters and the public at large. The chief advocates of full disclosure say they don't want to interfere with any group. Last year's House debate suggested, however, that some congressmen do see disclosure as a way of embarrassing or burdening interest groups whose lobbying they find bothersome.

So far, enough lawmakers have recognized these and other problems so that no overreaching bill has gotten through. A House judiciary subcommittee is now tackling the subject again. The White House has been seeking compromises, but a coalition of interest groups—ranging across the spectrum from business associations to the Sierra Club—is insisting on a carefully limited bill. Their position may sound self-serving, but it really serves the national interest in free discussion of public affairs.

DISABLED AMERICAN VETERANS,
NATIONAL SERVICE AND LEGISLATIVE HEADQUARTERS,
Washington, D.C., Apr. 4, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives Washington, D.C.

DEAR CHAIRMAN DANIELSON: This letter is in reference to lobby reform legislation that is presently the subject of examination and consideration by the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee.

As you are aware, the Disabled American Veterans, a Congressionally chartered nonprofit veterans' organization, presently includes among its various programs of service the maintenance of a National Department of Legislation, the office of which is located here in Washington, D.C. The Federal legislative activities of that office are focused primarily upon initiating and supporting legislation in the Congress which would improve America's system of veterans' benefits and services—particularly those which favorably affect the wartime service connected disabled veteran, his dependents and survivors.

Accordingly, the DAV is registered as a lobbying organization and does file quarterly reports with the Congress as presently required by the Federal Regulation of Lobbying Act of 1946.

Having established the basis of our organization's interest on the issue of lobby reform, I would like to draw your attention to an area of concern that we have with respect to H.R. 1979, a bill presently pending in your Subcommittee.

As you will recall, in 1978 the House of Representatives passed a lobbying bill (H.R. 8494) which was amended on the floor to include a "grass-roots" provision.

This provision would have required the report and description of each written and/or oral communication that is made to any member of Congress, or any other Federal officer and employee, by the DAV's National organization, its fifty state Departments and its 2,500 local Chapter units that are spread throughout the United States.

H. R. 1789, now pending before your Subcommittee, has a similar "grass-roots" provision.

I must point out that in pursuit of its legislative objectives, the National organization of the DAV and its state and local Chapter affiliates regularly initiate, or

request the initiation of, literally thousands upon thousands of such written and oral communications to members of Congress and other Federal officials. To attempt to record, describe and report each such communication would be a bureaucratic nightmare.

Even assuming that such reports could be kept, assembled and timely filed, their size and volume would be of such a magnitude that we doubt that they would add very much to the *reasonable* enlightenment of our organization's lobbying activities.

In addition to this criticism, and much more importantly, we believe H. R. 1789 would encroach upon the basic, First Amendment right of all Americans—that of free speech and the right to petition, either individually or collectively, their elected representatives and governmental officials. Recognizing that this is certainly not the intent of the bill, we nonetheless view H. R. 1789, as it is now written, as a clear danger to the uninhibited free flow of communication between the American people and those they have chosen to represent their interests in Washington, D.C.

I can assure you, Congressman Danielson, that our organization shall comply with any lobby statute that the Congress may see fit to enact into law. Our paramount concern is that the Congress not pass a lobby reform bill that would cripple the legislative activities of an organization such as the Disabled American Veterans. I, therefore, respectfully request that you do all that you can to insure that this does not occur.

Thank you very much for your kind attention to this letter, and I would appreciate hearing your views on this important subject.

Sincerely yours,

JOHN F. HEILMAN,
National Legislative Director.

cc: Mr. Hightower
Mr. Adams
Mr. Hartnett

KALAMAZOO, MICH., *March 27, 1979.*

GEORGE DANIELSON AND SUBCOMMITTEE.

In the upcoming legislation will probably be some type of lobbying disclosure. It is imperative that any final version not be one to discriminate against the small or largely volunteer lobby. Requiring small, low-budget groups to report all contacts made and record all accounts, etc. could in itself deplete all funds available. Large lobbies with seemingly endless reserves may be able to afford this but we also should not eliminate the small lobby or ultimately the individual. In the upcoming legislation please be sure to not eliminate the small or low-budget lobby.

WALTER KREMERS.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., Mar. 1, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee Administrative Law
House Judiciary Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I respectfully submit the following written comments for inclusion into the record of the Committee's hearing on HR 81, a bill to regulate lobbying and related activities, known as the "Public Disclosure of Lobbying Act of 1979."

HR 81 would not be applicable by definition to any State or local unit of government. Section 2(10) of the bill specifically excludes such units from the definition of "organization" to which the proposed law would be applicable. In addition, the Act includes Puerto Rico within the definition of "State." Therefore, instrumentalities of the Government of Puerto Rico are not subject to the provisions of this legislation.

The Government of Puerto Rico operates an office here in Washington, D.C., as most other States do. This office, which was established in 1950 as part of the Executive Branch of the Puerto Rican Government pursuant to Law No. 246 of 1950 of the Puerto Rico Legislative Assembly, is officially known as the "Office of the Commonwealth of Puerto Rico in Washington" (OCPRW). This office is presently located at 1625 Massachusetts Avenue, N.W., is run by an Administrator appointed by the Governor of Puerto Rico. This Administrator and the personnel of the Office are civil servants under the State Government's personnel system.

The mission of the OCPRW is set forth in Law No. 246, and is akin to the mission of other State offices in the District of Columbia. It represents a host of Puerto Rico

government agencies before the Executive Branch of the Federal Government, monitors activities within the federal Executive and Legislative Branches of interest to the Puerto Rico government, and renders assistance to my office from time to time. In addition, it performs public relations and informational activities for the United States public by disseminating information on Puerto Rico and its government. It also pursues any matters entrusted to it by the Governor.

In short, this 27-year old, 30-man office, whose budget is provided exclusively by the Legislative Assembly of Puerto Rico every year, is a classic model of an openly-run and legitimate agency of a State government here in Washington. It is my firm opinion, which I trust is shared by this Committee without reservations, that the OCPRW fits squarely within the exclusion set forth in section 2(10) of HR 81. Therefore, if the Committee shares my views, I see no need to recommend drafting changes to the bill to clarify its purpose further, since HR 81 is designed to exclude genuine State government offices such as OCPRW operating in Washington, D.C.

Notwithstanding, I want to make myself clear that I will be opposing any intent of including offices like OCPRW within the definition of "organization". As you must be aware, as Resident Commissioner of Puerto Rico in Washington, I am entitled to a budget amount from the House as well as allowance and all other benefits equal to any other member of Congress, who in average represents half a million constituents. However, I am the sole Congressional representative of 3.2 million people, thereby representing the largest constituency in Congress. OCPRW was conceived having in mind among other things the limitations of my office and the needs of the people of Puerto Rico for an adequate representation in Congress. This office is a complement to my needs and it provides the necessary assistance for the discharging of my duties. The Government of Puerto Rico never intended to make OCPRW a lobbyist office nor is it one in the traditional sense of the word. It is solely a governmental instrumentality geared to provide services and support to my office and it could be distinguished from other State offices in Washington.

If OCPRW were to be included within the definition of organization in Section 2(10) of HR 81 or in any other bill it would be tantamount to having OCPRW submit a report to Congress of my activities as a Congressman.

I would be more than happy to submit further information to this Committee as may be requested to answer any questions on this subject.

Cordially,

BALTASAR CORRADA, M.C.
Resident Commissioner, Puerto Rico.

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.,
UCPA GOVERNMENTAL ACTIVITIES OFFICE,
Washington, D.C. March 22, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, House Subcommittee on Administrative Law and Governmental Relations, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE DANIELSON: On behalf of United Cerebral Palsy Associations, Inc., I request that our attached comments on H.R. 81 and H.R. 1979, different versions of the "Public Disclosure of Lobbying Act of 1979," be included in the official hearing record.

UCPA is a nationwide voluntary, non-profit organization, classified by the Internal Revenue Code as a Section 501(c)(3) organization. Our roughly 270 affiliates comprise a network of voluntary community agencies serving the lifetime needs of children and adults with cerebral palsy and their families. Our primary goals are two-fold: To prevent cerebral palsy and to help persons with disabilities shape their lives by their abilities rather than their disabilities.

UCPA accepts the concept that 501(c)(3) charitable organizations should not devote a substantial portion of their activities toward attempts to influence legislation and we accept the idea of disclosure of substantial lobbying activities. These concepts have already been implemented by the Congress in the "Tax Reform Act of 1976" (P.L. 94-455).

However, certain provisions contained in H.R. 81 and H.R. 1979 go well beyond the P.L. 94-455 provisions and would have the result of imposing undue administrative burdens and costs on charitable organizations, establishing obligatory reporting situations which would be nearly impossible to comply with, and enfringing upon the basic rights of volunteers associated with voluntary organizations.

Both H.R. 81 and H.R. 1979 fail to recognize the existing reporting requirements of 501(c)(3) organizations. This failure to recognize would result in a dual reporting system further increasing the administrative costs and burdens imposed upon chari-

table organizations by governmental regulation. UCPA recommends that for purposes of public disclosure of lobbying by 501(c)(3) organizations, the P.L. 94-455 provisions apply in lieu of proposals contained in H.R. 81 and H.R. 1979.

Attached are our specific comments on various issues contained in H.R. 81 and H.R. 1979.

Thank you for considering our views.

Sincerely,

E. CLARKE ROSS, *Director,*
UCPA Governmental Activities Office.

Attachment.

UCPA STATEMENTS ON PUBLIC DISCLOSURE OF LOBBYING ISSUE PRINCIPLES

Issue (In terms of prominent proposals)	*UCPA Statement*
(1) Public Disclosure of Lobbying Bills Apply To 501(c)(3) Organizations.	501(c)(3) organizations are already constrained from devoting a substantial part of their activities toward attempting to influence legislation. UCPA already reports its lobbying activities to the Internal Revenue Service as specified in the "Tax Reform Act of 1976." Dual reporting would increase administrative costs, thus taking away funds from direct services to consumers. UCPA believes current reporting requirements are adequate; dual reporting is not needed.
(2) Agency would be required to disclose the names of all contributors making donations of $3,000 or more.	UCPA categorically opposes this recommendation for it would discourage voluntary giving. Few donors wish to have their names listed on publicly available rosters; donors who value their privacy would simply not make large contributions. Additionally, the Supreme Court (according to the American Civil Liberties Union) has ruled that it is unconstitutional to require disclosure of membership of private organizations as a violation of the right to associational privacy.
(3) Definition of threshold. Prominent proposals include 15 or more oral lobbying communications per quarter for 1 lobbyist; 1 lobbyist paid to lobby 24 or more hours per quarter or 2 or more people to lobby 12 hours each per quarter; $5,000 on grass roots lobbying; or 1 lobbyist paid to lobby all or part of each of 13 days or 2 or more people to lobby on all or part of each of 7 days.	UCPA supports the definition of "substantial" lobbying contained in the "Tax Reform Act of 1976." Lobby activity is defined in terms of dollar limits. Nontaxable lobby amounts are established by sliding percentage scale: 20% of first $500,000; 15% of second $500,000; 10% of third $500,000; and 5% of the remainder of its annual expenditure except no 501(c)(3) organization may ever spend more than $1 million on lobbying.
(4) Grass roots lobbying is defined as any solicitation expected to reach 500 or more persons, or 100 or more employees, or 25 or more officers and directors, or 12 or more affiliated organizations.	The "Tax Reform Act of 1976" limits 501(c)(3) grass roots lobbying to one-quarter of the basic nontaxable lobby amount. This is a separate limit from the lobbying category. UCPA supports this existing limit.

(5) All meetings between headquarters and affiliates on lobbying strategy would have to be reported.	UCPA supports this provision as a component of grass roots lobbying.
(6) In addition to efforts to influence Members Of Congress or their staffs, add effort to influence federal agency contacts.	UCPA supports this for it is consistent with the "Tax Reform Act of 1976." We are opposed to efforts limiting response to regulations and rules but favor disclosure of efforts to influence legislation.
(7) Any unpaid volunteer associated with the organization who worked to organize public support on federal issues related to the organization would have to keep records which the organization would have to report.	This appears to be an unconstitutional enfrigement on volunteers' right to free speech and petition. It also presents an impossible problem to keep complete and fully accurate records. Many volunteer initiatives are not sanctioned by the organization.
(8) Should affiliates keep separate records and register individually or should the national association compile all records and submit a single consolidated report?	As each voluntary organization has a different structure, flexibility in reporting is essential. For UCPA's purposes, each affiliate should be held accountable for their own lobbying activity. Centralized reporting systems are time consuming and expensive further increasing administrative costs. It is virtually impossible to know in advance of an affiliate's lobbying activities; thus national associations would be required to report activities which they may not have encouraged nor approved.
(9) Any communication with a Member of Congress, or an individual on the staff of such member, representing the state in which a 501(c)(3) organization is principally located should be exempt.	UCPA supports this proposal.

E. CLARKE ROSS, *Director,*
UCPA GOVERNMENTAL ACTIVITIES OFFICE,
March 19, 1979.

INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA,
Washington, D.C., Mar. 28, 1979.

Re lobby disclosure legislation.

Hon. GEORGE DANIELSON,
Chairman, Administrative Law and Governmental Relations Subcommittee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Interstate Natural Gas Association of America (INGAA) is a non-profit national trade association whose membership includes virtually all of the major interstate natural gas transmission companies in the United States. In conjunction with the representation of its members as to matters of industry-wide interest, INGAA has occasion to monitor the activities of the United States Congress with respect to legislative proposals which are of interest to our members. Accordingly, we are interested in any legislative proposals pertaining to the regulation of lobbying and related activities, such as those which the Subcommittee is currently considering.

BACKGROUND CONSIDERATIONS

We recognize that legislation pertaining to the regulation of lobbying is predicated in part upon the premise that the public has an interest in being apprised as to the identity of organizations and individuals who endeavor to influence the legislative process. However, as it relates to the subject of disclosure requirements, proposed legislation in this area must also be cognizant of the rights of individuals with

respect to freedom of speech and privacy, and the right to petition their elected representatives. More specifically, a disclosure law must not impinge upon these basic liberties, nor inhibit or discourage participation in the legislative process.

With these considerations as a background, we would like to focus upon and discuss several specific topics which the Subcommittee will be considering.

REPORTING REQUIREMENTS

Certain of the bills include provisions which would require disclosure of individual and corporate contributions to organizations engaged in lobbying activities. As you are aware, the Committee rejected the contributor disclosure concept in the 95th Congress, and House Report No. 95-1003 discussed the constitutional and practical problems associated with such a concept. (See page 53) We concurred with the action of the Committee at that time, and the analysis set forth within the report, and urge a similar rejection of the contributor disclosure proposal at this time.

Similarly, we are opposed to the inclusion of "grass roots" lobbying within the scope of those activities which would be subject to reporting requirements. We believe the balancing of interests must be struck in this instance in favor of the aforementioned individual rights of speech, petition and privacy. Aside from questions as to the constitutionality of such legislation, the potential for abuse in the enforcement of reporting requirements in this area is too great. Accordingly, we urge the Subcommittee to reject all proposals which would require the reporting of "grass roots" lobbying activities.

ENFORCEMENT AND SANCTIONS

INGAA also believes that to the extent any new enforcement and penalty provisions pertaining to reporting requirements are to be considered, the same must be carefully drafted in order to minimize the potential for abuse. In that regard, we take strong issue with the suggestion that such penalties should include the possible imposition of criminal sanctions. The lobbying activities that would be covered by the several bills in question are not of an improper or immoral nature per se. Moreover, the prospect of a criminal sanction could have a chilling effect upon public participation in the legislative process. The objective of disclosure can be achieved through a combination of informal compliance efforts supplemented by the imposition of civil sanctions, where necessary and appropriate.

In addition, enforcement and penalty provisions should be drafted in such a manner as to preclude "fishing" expeditions of a random and purposeless nature, and "compliance" investigations which have the effect of overburdening and crippling an organization by tying up its resources and casting aspersions upon its reputation. Moreover, such proposals should encourage the use of informal compliance measures at the administrative level wherever possible.

CONCLUSION

In summary, INGAA believes that any lobby disclosure legislation requires careful consideration and a balancing of affected interests. Of the several bills currently pending before the Subcommittee, H. R. 81 appears to represent the most balanced approach to the subject, provided certain modifications are made with respect to the enforcement and sanction provisions thereof. If the Subcommittee should conclude that additional legislation is needed in this area, then we strongly urge that such legislation be drafted to reflect the considerations discussed above.

Very truly yours,

LAWRENCE V. ROBERTSON, JR.,
Vice President, General Counsel and Secretary.

NATIONAL COTTON COUNCIL OF AMERICA,
Memphis Tenn., March 28, 1979.

Subject: Lobby reform.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, House Judiciary Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We respectfully request that this letter be placed in the record of the hearing on lobby reform conducted recently by your subcommittee.

The National Cotton Council is the central organization of the raw cotton industry, representing cotton growers, ginners, warehousemen, merchants, cooperatives, manufacturers, and seed crushers. We are, and have been for many years, a registered and reporting lobbying organization. We believe, along with most members of Congress, that lobbying in its best sense serves the national interest as well as that

of individual groups. Lobbying efforts perform vital service by providing accurate information on issues before the Congress. With the myriad of issues before our lawmakers, documented information, probably not readily available from other sources, can be most helpful. The Congressman obtains the viewpoint of both sides to questions and thereby is assisted in making his decision on what he deems to be the public good. We do not object to the general thrust of bills considered in the hearing that the public should know who is lobbying, the subject matter of their lobbying contacts, and how much they spend in these efforts. Our disagreement concerns what should be reported and in what detail.

We have no objection to reporting the names of persons employed to engage in lobbying or the names of officers and Board members. We believe it is proper to identify the supporting members by class—for example, the seven industry segments listed above that comprise our organization.

But identification of the individual business organizations who are members—as proposed in one of the bills under consideration—raises serious questions and would create serious difficulties. Unquestionably to do so would render our organization less effective as the voice of the cotton industry to the federal government. This is especially true if coupled with the requirement that the amount contributed by each member above the $3,000 level be reported, even in size categories. Our membership dues are based on the volume of cotton handled. Therefore, each member firm's volume of business would be revealed by such reporting.

Our members are business people and consider their size category proprietary information. Many would discontinue membership rather than make this type of information public and therefore available to their competitors.

We have no objection to revealing the general subject matter of our lobbying contacts each quarter. This information is incorporated in our lobbying reports at the present time. We strenuously object, however, to detailed reporting of the subject matter of each individual contact. Time to prepare such reports would be excessive, would be costly and would not serve the purpose intended. This might be interpreted by the Comptroller General as a legislative requirement unless specifically prohibited in the bill or its committee report. In addition, the proposal to require reporting on such activities as "preparation and drafting" of materials to be used in lobbying contacts would be particularly onerous for our organization because of the endless paperwork. We urge the Committee to refrain from incorporating any such proposal in its bill.

As indicated earlier, we consider it proper to require the reporting of the total amount spent in lobbying contacts. We strongly feel, however, that revealing salaries and other remuneration of individuals violates personal privacy and should not be required.

In addition, we believe there should be no requirement for reporting written solicitations which are limited to the membership of a lobbying organization. Such communications are internal matters and should not be subject to public scrutiny.

We greatly appreciate the opportunity to present our views.

Sincerely,

C. HOKE LEGGETT, *President.*

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

WEDNESDAY, MARCH 7, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 2226 of the Rayburn House Office Building, the Honorable George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Barnes, and Moorhead.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., assistant counsel; Alan F. Coffey, Jr., associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 10 o'clock having arrived, and we have a quorum for the purpose of taking testimony, the subcommittee will come to order, and we will proceed with further hearings on the bill H.R. 81 and companion bill relating to the subject of relating lobbying, required disclosure of lobbying activities.

Our first witness will be the General Accounting Office, which is represented by Hon. Robert F. Keller, Deputy Comptroller General, and by Mr. Ken Mead of the Office of General Counsel.

I don't know how you gentlemen prefer to proceed, but whatever is your pleasure.

Mr. Keller, If I may, Mr. Chairman, I have a fairly brief statement that I would like to proceed with.

Mr. DANIELSON. Let us, without objection, include your statement verbatim in the record, and that will free you to proceed in your most efficient manner, stressing the points which are of significance to the hearings.

[The complete statement follows:]

SUMMARY OF DEPUTY COMPTROLLER GENERAL'S STATEMENT ON H.R. 81

Item I—*Need for Disclosure Legislation*

Aside from the defects of the present lobbying law, and the clear shortcomings in the present law's administration and enforcement, the rationale for a new and comprehensive disclosure statute finds support in the fact that, like the Freedom of Information Act and other recent disclosure measures, it is an initiative aimed at openness in Government and the public's right to know about the workings of their Government. GAO believes a substantial public interest could be served by reasonable disclosure legislation in the lobbying area.

Item II—*Registration, Quarterly Reports, and Exemptions*

Both the bill's threshold and reporting provisions could be modified in several specific ways to reduce recordkeeping burdens and promote the reporting of meaningful and useful information.

GAO also recommends clarification of the requirement that registered organizations disclose the issues upon which they spend a "significant amount" of their direct lobbying efforts, and recommends a narrowing of the exemption for "communications made at the request of a Federal officer."

Item III—*Administration and Enforcement*

Although the Comptroller General is designated as the official responsible for administering the new law, the bill does not give him the tools to do so effectively, since authority to ensure all aspects of compliance is vested exclusively in the Attorney General. Based on experience with the Federal Regulation of Lobbying Act and for other reasons, GAO considers reliance on the administering agency for resolution of routine and technical compliance problems, rather than on the prosecutive arm of government, a less intrusive, more amicable, and more effective approach to compliance. GAO therefore urges the subcommittee to modify H.R. 81's enforcement scheme or, alternatively, place responsibility for administration with some other governmental entity or official.

STATEMENT OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I appreciate the opportunity to present the views of the General Accounting Office on H.R. 81 and related bills.

Our testimony this morning will focus on three areas. As the subcommittee requested, we first will express our general opinion on the need for lobbying disclosure legislation. Second, we will suggest several refinements that could be made to the bills to minimize recordkeeping burdens and promote the reporting of meaningful information. And third, we will explain our views on the administration and enforcement of the proposed law.

NEED FOR DISCLOSURE LEGISLATION

Mr. Chairman, I believe the necessity for change in the present law is now almost universally accepted.

As you may know, on April 12, 1975, GAO issued a report entitled "The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration." Since its enactment in 1946, the Federal Regulation of Lobbying Act has been the subject of continual congressional scrutiny and generally has been judged to be ineffective. In our report, we confirmed this judgment. We found the enforcement and administration of the Act to be woefully inadequate and, on numerous occasions, testified to this effect before this subcommittee and before the Senate Committee on Governmental Affairs.

The rationale for a new and comprehensive disclosure statute finds support on several other grounds, however, and these grounds have only an indirect relationship to the defects of present law, and the clear shortcomings in the present law's administration and enforcement.

In recent years, for example, the Congress has passed disclosure legislation that is aimed at openness in Government and at providing members of the public access to information about the workings of their Government. These initiatives cover the disclosure of records through the Freedom of Information Act, the disclosure of campaign finances, open agency and congressional hearings, and the disclosure of financial holdings of senior governmental officials, and other matters.

An important aspect of the governmental process that is not covered in any meaningful way is the disclosure of major lobbying efforts that are designed to secure the passage or defeat of legislation. We believe a substantial public interest could be served by reasonable disclosure legislation in this area as well. The interest to be served by lobbying legislation is analogous to the interest served by other disclosure statutes, namely, the public's right to know the source and scope of the major influences that are brought to bear on the legislative process by the private sector. Removing the cloak of secrecy from efforts to influence the Congress also should improve the public's confidence in the legislative process. Unjustified suspicions of improper behavior could be removed and better appreciation gained of how Congress seeks to develop, from competing views, legislation that is in the public interest.

H.R. 81

We consider the disclosure provisions of H.R. 81 a marked improvement over those of the present law. We believe several refinements to the bill's threshold and disclosure requirements could minimize recordkeeping burdens and promote the reporting of meaningful and useful information.

THRESHOLDS

H.R. 81 would apply to any organization that spends more than $2,500 in any quarterly filing period to retain another person to engage in certain lobbying activities on its behalf. The bill also would apply to any organization which, acting

through its employees, made a specified number of lobbying communications during a quarter and made expenditures in excess of $2,500 for lobbying. A lobbying organization that crossed either of these so-called "thresholds" would register as a lobbyist and would file quarterly reports on certain of its lobbying activities and lobbying expenditures.

To determine whether it had crossed a threshold, H.R. 81 would require an organization to allocate its lobbying and nonlobbying expenditures for a wide variety of cost items, including the costs of research, drafting, support staff salaries, the salaries and fees of employees and retainees who do not lobby exclusively and, under certain circumstances, the costs of overhead. For organizations that make expenditures for activities other than lobbying, cost allocations for several of these items could prove difficult.

Although we have no opinion on the appropriate minimum expenditure that should be required before an organization must register and report, we recommend allocation requirements for the apportionment of comparatively indirect costs like utility expenses, office supplies, etc., be avoided to the maximum extent practicable. By confining threshold expenditures to cost items such as gifts to Federal officers, social events held for Federal officers, retainer fees, and lobbyists' salaries, we believe organizations would be able to determine with greater ease whether they had crossed a threshold.

QUARTERLY REPORTS

H.R. 81 would require registered lobbying organizations to file quarterly reports with the Comptroller General. These reports ordinarily would contain considerably more information than that required for registration.

Among other matters, quarterly reports would disclose: (1) total quarterly expenditures for direct lobbying activities; (2) the identity of certain of the organization's retained lobbyists and employees, and expenditures made incident to the retention or employment; and (3) the issues upon which the organization spent a significant amount of its direct lobbying efforts. Under H.R. 1979, a bill identical to one passed by the House during the 95th Congress, a registered lobbying organization also would disclose certain of its indirect lobbying campaigns and specified organizational contributions that were used for lobbying purposes.

H.R. 81's disclosure provisions would require organizations to apportion lobbying and nonlobbying costs when reporting total direct lobbying expenditures. The sundry cost items to be included in this apportionment are similar to those that must be considered in determining whether an organization crossed a threshold. We believe cost allocations for the purpose of disclosing total direct lobbying expenditures could be limited along the lines suggested for the thresholds.

We also recommend the subcommittee clarify the requirement that an organization disclose the issues upon which it spends a "significant amount" of its direct lobbying efforts. One possible solution would require disclosure of a specified number of issues, as measured by the approximate amount of time or money expended.

EXEMPTIONS

Certain activities that would otherwise qualify as lobbying are specifically excluded from the bill's definition of "lobbying communications." Exempt activities are neither reportable nor considered in the determination whether an organization meets one of the bill's thresholds.

One exemption excludes from coverage any communication made at the request of a Federal officer. Under this exemption, a Federal officer presumably could ask an organization to lobby other Federal officers on a given issue. The resulting communication would not be covered by the bill. We believe this exemption needs narrowing, and recommend it be confined to communications made to the requesting Federal officer or to an entity such as a congressional committee, that the requesting official represents.

As for the exemptions generally, we believe lobbying organizations should have the option of using the exemptions when making threshold computations and preparing quarterly reports. In this way, organizations could avoid an apportionment of expenditures and contacts between exempt lobbying and reportable lobbying.

ADMINISTRATION AND ENFORCEMENT

H.R. 81 designates the Comptroller General as the official responsible for administering the proposed law effectively, and for ensuring, among other matters, that lobbying information is available to and accurately summarized for the Congress and the public. Subject to a legislative veto, the Comptroller General also would issue rules and regulations. But for reasons that are not clear to us, authority to

ensure all aspects of compliance is vested exclusively with the Attorney General. We believe this enforcement scheme would prove to be inequitable, unworkable, and ineffective.

When disclosure legislation was under consideration by the 94th and 95th Congresses, we said that GAO was willing and able to perform the administrative and noncriminal compliance functions required by bills that covered lobbying on legislative matters. We testified that vesting some compliance authority in the Comptroller General would be essential to the administration of the new law. We have not changed this position.

But H.R. 81, unlike the lobbying bills passed by the Senate and the House during the 94th Congress, and the bill reported favorably from this subcommittee during the last Congress, does not place any compliance authority with the Comptroller General. Although the bills under consideration today give the impression that the Comptroller General would be responsible for the law's effective administration and for monitoring compliance with numerous disclosure requirements, we would have no real means to assure either effective administration or its corollary, compliance.

As the bill is presently drafted, for example, we would lack authority even to inquire informally of a registered lobbying organization whether it had inadvertently failed to file a quarterly report. Under the bill, routine matters of this and substantially lesser gravity would be referred instead to the Attorney General for investigation and corrective action. We consider reliance on the administering officials for resolution of these problems, rather than on the prosecutive arm of Government, a less intrusive, more amicable, and more effective approach to compliance. But unless the statute provides us some reasonably effective compliance authority, so we can assure the Congress, lobbying organizations, and the American public that the new law has adequate oversight, we strongly recommend that responsibility for administering lobbying disclosure not be placed with the Comptroller General.

Mr. Chairman, I believe our position on this matter is justified in view of the experience with the present law.

The Department of Justice is responsible for enforcing the current lobbying law. Although the Clerk of the House and the Secretary of the Senate administer the law, these officials are mere repositories of information they cannot verify, and they lack investigative and compliance authority. Our report on the present lobbying law confirmed the near total ineffectiveness of this enforcement scheme, and the crippling effects of that scheme on the lobbying law's administration.

The report shows that of the nearly 2,000 lobbyists who filed in one 3-month period in 1974, over 60 percent filed late and nearly 50 percent of the filings were defective on their face. Unlike other disclosure statutes, the administering officials had no authority to require correction of the most minor of these inadequacies. And the Justice Department investigated only five matters over a 4-year period, 1972-1975.

As to the existing lobbying law, the Justice Department has repeatedly said the administering officials are in the best position to monitor compliance and provide oversight. While we agree from a managerial and efficiency standpoint, we are obliged to point out that the administering officials are not able to perform either function, since they lack authority to review records, to give meaningful guidance to lobbyists, to handle minor or technical infractions, or to ensure completion of the reports lobbyists file. Other than transferring responsibilities to the Comptroller General to be a records repository, H.R. 81 would not change this situation.

We have serious reservations whether the Justice Department should be relied upon as the exclusive agency to foster compliance with a disclosure statute that deals with lobbying. The Department and its investigative arm, the Federal Bureau of Investigation, have extensive and time consuming enforcement responsibilities for substantially the entire Federal criminal code. From the standpoint of its resources and existing enforcement priorities for serious criminal and civil offenses, we question whether the Department would be in a position to resolve all or even substantially all of the noncriminal compliance problems, most of them relatively minor, that may arise under an expanded and comprehensive disclosure law.

If there is to be effective administration, the administering agency, in our view, should have some basic tools, such as the authority to provide oversight, the authority to provide meaningful guidance to lobbyists on disclosure and registration requirements, limited authority to gain access to records required to be maintained, and the ability to handle routine or technical civil compliance problems.

When problems such as the inadvertent, unknowing, or negligent omission of information from a quarterly report do arise, the administering officials should be in a position to attempt to conciliate the problem administratively or informally in a timely, effective, and unobtrusive manner.

Mr. Chairman, we are also concerned with the transfer of clerical duties to the Comptroller General, without any compliance tools—and that is what H.R. 81 proposes to do. It could place GAO in the anomalous and awkward position of appearing responsible for administration and for providing complete lobbying information, when, in fact, the Comptroller General would lack the tools to administer the law effectively.

It is for these reasons that we urge the subcommittee to modify H.R. 81's enforcement scheme or, alternatively, place responsibility for administration with some other governmental entity or official. We also recommend the Attorney General's lobbying disclosure enforcement responsibilities generally be limited to the resolution of aggravated situations where a lobbyist proceeds in an apparently deliberate or reckless violation of law.

With these modifications, we believe H.R. 81 would accomplish the companion objectives of providing the Comptroller General with the means necessary to administer the law effectively, and of affording lobbying organizations optimum opportunities to comply with the new law before corrective action by the Attorney General would be necessary or desirable.

Mr. Chairman and Members of the Committee, this concludes our statement. We will be glad to respond to any questions you have.

TESTIMONY OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY KENNETH MEAD, OFFICE OF GENERAL COUNSEL

Mr. KELLER. Thank you very much, Mr. Chairman. First I want to say we appreciate the opportunity to be heard on H.R. 81, and several of the similar bills. The bill would place responsibility for administering lobbying disclosure with the General Accounting Office and so naturally we have a great deal of interest.

This morning I would like to discuss three major issues which we think are important. First, Mr. Chairman, is there a need for lobbying disclosure legislation? As you may know, GAO issued a report in 1975 entitled, "The Federal Regulation of Lobbying Act, Difficulties in Enforcement and Administration."

This was a report on the administration and enforcement of the 1946 act. We found, Mr. Chairman, that the act had not been successful. It had not been enforced to any great extent by the Secretary of the Senate, the Clerk of the House, or by the Justice Department. We, like many other people, thought it was a completely ineffective act.

We believe the time has come to enact a more comprehensive and improved lobbying disclosure statute, and we have testified to this effect before this subcommittee and before the Senate Committee on Government Affairs. I think the rationale for a new and comprehensive disclosure statute finds support on several other grounds that have only an indirect relationship to the defects of the present law.

In recent years, for example, the Congress has passed disclosure legislation that is aimed at openness in government and providing members of the public access to information about the workings of their government.

These initiatives cover the disclosure of records through the Freedom of Information Act, the disclosure of campaign finances, open agency and congressional hearings, and the disclosure of financial holdings of senior government officials.

An important aspect of the government process that is not covered in any meaningful way is the disclosure of major lobbying efforts that are designed to secure the passage or defeat of legisla-

tion. We believe a substantial public interest could be served by reasonable disclosure legislation in this area as well.

The interest to be served by lobbying legislation is analogous to the interest served by other disclosure statutes; namely, the public's right to know the source and scope of the major influences that are brought to bear on the legislative process by the private sector. Removing the cloak of secrecy from efforts to influence the Congress also should improve the public's confidence in the legislative process.

Unjustified suspicions of improper behavior could be removed and better appreciation gained of how Congress seeks to develop from competing views legislation that is in the public interest.

We consider the disclosure provisions of H.R. 81 a marked improvement over those of the present law; however, we believe several refinements of the bill's thresholds and disclosure requirements could minimize the recordkeeping burden and promote the reporting of meaningful and useful information.

Under the thresholds, Mr. Chairman, I believe all of the bills—certainly H.R. 81—would apply to any organization that spends more than $2,500 in any quarterly filing period to retain another person to engage in certain lobbying activities on its behalf. The bill also would apply to any organization which, acting through its employees, made a specified number of lobbying communications during a quarter and made expenditures in excess of $2,500.00 for lobbying.

A lobbying organization that crossed either threshold would register as a lobbyist and file quarterly reports on certain of its lobbying activities and expenditures.

To determine whether it crossed a threshold, H.R. 81 would require an organization to allocate its lobbying and non-lobbying expenditures for a wide variety of cost items, including, as we understand the bill, the cost of research, drafting, support staff salaries, the salaries of employees and fees of retainees who do not lobby exclusively, and, under certain circumstances, the cost of overhead. For organizations that make expenditures for activities other than lobbying, cost allocations for several of these items could be quite difficult.

We do not have any opinion as to what the threshold should be, but we do recommend consideration by the committee that the allocation requirements for the apportionment of comparatively indirect costs like utility expenses, office supplies, et cetera, be avoided to the maximum extent possible. This could be accomplished by confining threshold expenditures to cost items such as gifts to Federal officers, social events held for Federal officers, retainer fees and lobbyist salaries.

With these modifications, we believe lobbying organizations would be able to determine with greater ease whether they had crossed a threshold. This could be brought about by a change to the definition of "expenditure" in Section 2 of the bill. By limiting the definition to the most important lobbying expenses, I think it would probably serve the purpose of the Congress and reduce some of the recordkeeping on the part of lobbying organization and others who are required to keep records. A similar recommenda-

tion would apply with respect to the quarterly reports that are required to be filed once a lobbyist has registered.

We do have one concern with the section of the bill that requires an organization to disclose the issues upon which it spends a "significant" amount of its direct lobbying efforts. We are concerned with the meaning of the term "significant." I think it's often in the eyes of the beholder as to what is "significant", and we recommend the subcommittee consider some other test to cover this type of situation. Requiring disclosure of a specified number of issues on which an organization spent the most money or time might provide one solution.

Another point I would make, and this is a technical point, is that certain activities that would otherwise qualify as lobbying are specifically excluded from the bill's definition of lobbying communications. Exempt activities are neither reportable nor considered in the determination of whether an organization meets one of the bill's thresholds.

One exemption excludes from coverage any communication made at the request of a Federal officer. Under this exemption, a Federal officer presumably could ask an organization to lobby other Federal officers on a given issue. The resulting communication would not be covered by the bill. This is a very technical point, but I believe the committee may wish to address that consideration.

As for the exemptions generally, we think there would be some virtue to providing organizations with the option of disregarding exemptions in threshold computations and in preparing quarterly reports. If the exemption is not that important to the organization, this option would not require it to break out the exempt lobbying expenditures from covered expenditures. I see no harm to disclosure with this approach, since but for the exemption, the activity would qualify as lobbying.

Mr. DANIELSON. Let me interrupt you. How would you have that apply, to simply not consider the exemption activities when you make the threshold computation?

Mr. KELLER. I believe that is the way it would work. An organization would be authorized to exclude or include exempt activities, at its discretion.

Mr. DANIELSON. In other words, permitting them to include the exempt activities?

Mr. KELLER. Yes, sir.

Mr. DANIELSON. Would that not then build up the qualifying threshold more quickly? Of course it is a matter of option.

Mr. KELLER. Yes, it would. An organization that had not reached the threshold probably would want to exclude exempt activity, but once it crosses a threshold, it may wish to include exempt activity to minimize bookkeeping and cost allocation.

Mr. DANIELSON. I get your point. It is to let them include almost anything they want. If it is the exclusion we are concerned about, is that your point?

Mr. KELLER. That is my point.

Mr. DANIELSON. Very well. Thank you and proceed.

Mr. KELLER. The third major point I want to make, Mr. Chairman, is the one of most importance to us. H.R. 81 designates the Comptroller General as the official responsible for administering

the proposed law effectively and for ensuring, among other things, that lobbying information is available to and accurately summarized for the Congress and the public.

Subject to a legislative veto, the Comptroller General also would issue rules and regulations, but for reasons that are not clear to us, authority to insure all aspects of compliance is vested exclusively in the Attorney General.

We believe this enforcement scheme would prove to be inequitable, unworkable and ineffective. When disclosure legislation was under consideration in the 94th and 95th Congress, we said that GAO was willing and able to perform the administrative and noncriminal compliance functions required by bills that covered lobbying on legislative matters. We testified that vesting some compliance authority in the Comptroller General would be essential to the effective administration of the new law.

We have not changed this position, but H.R. 81, unlike the lobbying bills passed by the Senate and House during the 94th Congress and the bill favorably reported from this Subcommittee during the last Congress, does not place any compliance authority with the Comptroller General.

The bill under consideration today gives the impression that the Comptroller General would be responsible for the law's effective administration and for monitoring compliance with numerous disclosure requirements. But we would have no real means to assure either effective administration or its corollary, compliance.

We believe we would need the authority to inquire of a registered lobbying organization, whether, for example, it had inadvertently failed to file a quarterly report. Under the bill, routine matters of this and substantially lesser gravity would be referred instead to the Attorney General for investigation and corrective action.

We consider reliance on the administering officials for resolution of these types of problems rather than on the prosecutive arm of the government, a less intrusive, more amicable and, I might add, a far more effective approach to compliance. But unless the statute provide us some reasonably effective compliance authority, so we can assure the Congress, lobbying organization, and the American public that the new law has adequate oversight, we would strongly recommend that the responsibility for administering lobbying disclosure not be placed with the Comptroller General.

I believe our position on this matter is justified in view of the experience with the present law. I mentioned earlier, Mr. Chairman, that the present law—the 1946 Regulation of Lobbying act—gave the responsibility for receiving reports to the Clerk of the House and Secretary of the Senate, but the law gave them no real administering authority. They have no way of requiring anybody to file or to check to see if they did file, and our 1975 report shows that of the nearly 2,000 lobbyist who filed in one 3-month period in 1974, over 60 percent filed late, and nearly 50 percent of the filings were defective on their face.

Yet the Clerk of the House and the Secretary of the Senate felt that they did not have the authority to go back and say file it correctly or to point out the efficiencies. Under the 1946 Act, I suspect they were right. During the same period, the Justice De-

partment investigated only five matters alleging a violation of the lobbying law, and that is not meant in any way of criticism. If the administering agency is not able to find out if filings are made properly and so forth, then not many cases will be referred to the Department of Justice.

Also, Mr. Chairman, I would like to mention a serious reservation we have as to whether the Justice Department should be relied on as the exclusive agency to foster compliance with a disclosure statute that deals with lobbying.

The Department and its investigative arm, the Federal Bureau of Investigation, have extensive and time consuming enforcement responsibilities for substantially the entire Federal criminal code. From the standpoint of its resources and existing enforcement priorities for serious criminal and civil offenses, we question whether the Department would be in a position to resolve all or even substantially all of the noncriminal compliance problems, most of them relatively minor, that may arise under an expanded and comprehensive disclosure law.

If there is to be effective administration, we believe the administering agency should have some basic tools such as the authority to provide oversight, the authority to provide meaningful guidance to lobbyists on disclosure and registration requirements, limited authority to gain access to records required to be maintained and the ability to handle routine or technical civil compliance problems.

Mr. Chairman, we have given this particular to having the responsibility for administration in the General Accounting Office with no real enforcement powers point a great deal of thought. We feel quite strongly that the General Accounting Office should not become a mere repository of records and perform only a clerical operation. We have a serious concern whether that would be a proper role for the General Accounting Office.

So we would urge the subcommittee to consider modifying the bill to bring about a change in the enforcement or administrative requirements to be placed upon the Comptroller General. With the modifications that we have suggested, I believe H.R. 81 would accomplish the companion objectives of providing the Comptroller General with a means necessary to administer the law effectively and of affording lobbying organizations optimum opportunities to comply with the new law before corrective action is taken by the Attorney General.

Mr. Chairman, I would like to make one additional comment before I conclude. It is not part of my prepared statement. I understand that in testimony last week the Department of Justice took the position that they were uncomfortable with a provision of H.R. 81 that would give the Comptroller General authority to issue rules and regulations on lobbying, subject to a congressional veto.

I assume that they are uncomfortable because they have a question, as I understand their testimony, that the Comptroller General is a legislative officer, and, therefore, should not issue rules and regulations to carry out a law passed by Congress.

I would like to respond to this just briefly. Ever since 1921, when the Comptroller General was established by Congress, he has performed both executive functions and legislative functions. He is an article 2 officer who is appointed by the President and confirmed

by the Senate, and that being so, I see no problem at all in authorizing the Comptroller General to carry out what might be considered or called an executive function.

I suppose an argument could also be made that the rules and regulations are really a legislative function which the Congress has delegated to the Comptroller General, but I do want to make that point.

I believe this matter was recently covered to some extent in *Buckley* v. *Valeo,* where the Supreme Court in a footnote said the Comptroller General met the constitutional test of an Officer of the United States. There also is an interesting 1978 Fourth Circuit Court of Appeals case that involves the Librarian of Congress. The issue raised in that case was whether the Librarian was a legislative officer, and if so, whether he could constitutionally issue rules and regulations for the Copyright Office, which, of course, he has. The Court of Appeals reached the conclusion that the Librarian occupied a hybrid office and performs both legislative and executive functions.

The Court also concluded that because the Librarian is nominated and appointed by the President and confirmed by the Senate, he is an officer of the United States under the Constitution. The issuance of rules and regulations for the Copyright Office was therefore constitutional.

Mr. DANIELSON. I thank you, Mr. Keller. I will yield first to my distinguished colleague, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman. Mr. Keller, I appreciate your coming this morning and providing some added information on this subject.

The first thing I would like to ask you is could you be more specific as to what compliance tools the GAO thinks it needs to effectively administer a new lobbying law?

Mr. KELLER. Yes, sir. I would be happy to do that. We think the Comptroller General should be given authority to provide advisory guidance to organizations that inquire as to their registration and reporting responsibilities.

Now, some of the other legislation would call this an advisory opinion. I don't know whether you have to formalize it to that extent, but the Comptroller General should have some means of advising people whether they are required to file and in what form.

I think that is a service. It certainly would be a service to the public and to lobbying organizations. We don't believe we have that authority under the bill, and it will be difficult from this standpoint of sound administration to tell an organization to make up its own mind whether it is required to file or not.

Second, we believe we should have authority to monitor registration statements and quarterly reports for completeness, accuracy and timeliness, as well as the authority to request lobbying organizations to correct or complete noncomforming filings.

Third, we think there should be authority to request and obtain certain records of registered lobbying organizations. This would cover access to records supporting registration statements and reports that are required by law to be maintained, including the right to subpena such records, if necessary.

Fourth, the Comptroller General should be given authority to conduct a prereferral informal conference, of which the purpose would be to bring organizations into compliance through administrative conciliation, if necessary. Otherwise, every case, regardless of its gravity, would have to be referred to and settled by the Justice Department.

Mr. MOORHEAD. The power to make informal settlement is what you are basically referring to?

Mr. KELLER. Yes. I don't think it is the committee's purpose to send everybody to jail that makes a mistake as far as filing is concerned. This is why we make the suggestion.

We believe we should have the authority in this particular area to use our own attorneys to defend the actions of the Comptroller General in discharging the duties given to him under the Act, and to seek court enforcement of any subpenas.

Over the years we have had differences with the Department of Justice, and, under law, they are the only ones that can go into court and represent the United States. We could request that they obtain court enforcement of a subpoena, but they can decline our request and refuse to seek court enforcement.

Mr. MOORHEAD. There is one thing that comes up in the legislation. In most of the bills this language isn't included, but in the Common Cause version—H.R. 1979—they have a paragraph which requires the referral to the Attorney General of all aparent violations. That could pretty near wipe out the informal settlement conference.

Would you be for or against such a provision?

Mr. KELLER. If I understand your question, I would be opposed to our not having authority to handle certain classes of compliance problems through informal methods of conference and conciliation.

Mr. DANIELSON. Sir, I couldn't quite hear you. You would be against us in something?

Mr. KELLER. If I understood your question, we believe we should have the right to work our conciliations for minor or routine compliance problems.

Mr. MOORHEAD. This basically requires that you refer to the Attorney General all apparent violations?

Mr. KELLER. I think need a clarification here. I am suggesting that, short of referring for prosecution and so forth, we should try to work out these types of compliance problems administratively on an informal basis.

Mr. MOORHEAD. What you want to be able to do is to make the reference when you feel that all else has failed and that there are violations that you can't—

Mr. KELLER. That is correct. But certainly when there is an intent to violate the law, we would refer such matters directly to the Justice Department.

Mr. MOORHEAD. Do you think there is the need for a specific paragraph in the law to set that up, or could you refer violations to the law enforcement agency without specific authority?

Mr. KELLER. A specific conciliation authorization would be useful, particularly for cases that reach the stage of an apparent violation. As for the authority to refer a matter to the Attorney General, I don't think a specific statutory authorization is essen-

tial. In connection with our other work, we refer cases to the Attorney General when we think there is a possible violation of law.

Mr. MOORHEAD. I have one other question I want to ask you. In your statement you refer to the public's right to know the source and scope of the major influences that bear on the legislative process by the private sector. You weren't attempting to restrict that to the private sector, were you, as opposed to the public interest groups or to Government influences and so forth?

Mr. KELLER. No, sir. That is a choice of words——

Mr. MOORHEAD. You meant to expand that beyond what you actually said?

Mr. KELLER. Yes, sir.

Mr. MOORHEAD. I have no further questions.

Mr. DANIELSON. Well, if it will comfort my colleague from California, I don't suppose the General Accounting Office favors improper influences, no matter what the source would be. Would that be an accurate statement?

Mr. KELLER. I think that is a leading question, but, yes, sir.

Mr. MOORHEAD. I wanted him to say it.

Mr. DANIELSON. I don't know anything wrong with being leading, I appreciate very much your statement, and it is well thought out and concise, for which again I thank you. I am in substantial sympathy with some of your concerns, but I also am not totally at peace with them.

What you are saying in one context is that our hoped for goal is a disclosure. Public disclosure of the fact, the scope and the magnitude of the lobbying activity would itself be a sort of a regulation. In other words, to disclose the activities in the public forum where they're available to everyone to look at, even the press in their zealous search to protect our collective morals and so on, that the disclosure alone would be, we hope, effective to keep lobbying within acceptable bounds.

But we seem to have some fear that the disclosure alone is not enough, and you may be right. That is what concerns me. The reports today are filed with the Clerk of the House and the Secretary of the Senate. Isn't that true?

Mr. KELLER. That is true.

Mr. DANIELSON. And you say that they're defective on their face, in your opinion, and I will share that opinion, incidentally. Yet I have not seen any great public outcry. The press doesn't go in there and ferret out any defective on its face report and proclaim it in the headlines, XYZ Co. says they didn't spend a cent in the last quarter, and quite obviously they spent many, many cents.

The disclosure alone doesn't seem to be enough. Do you agree on that?

Mr. KELLER. I am not sure that I agree with that, Mr. Chairman. I think disclosure may well be enough. I think many of our more recent laws are premised on the idea of disclosures.

Mr. DANIELSON. I request you move the microphone up a little bit closer to you.

Mr. KELLER. My point is that disclosure is enough, but we are asking for the mechanics to insure that there is adequate disclosure.

Mr. DANIELSON. Now, I'm asking for the mechanics. Again I run into a little concern. I will stipulate that the person who becomes the repository of the records and who has the function of seeing that they are in appropriate form and so forth, has to have some kind of a sanction to use so that in fact there will be properly completed report forms.

You are entitled to those tools, if you are going to have the responsibility, that goes with it. But where I start you have some concern, is that I am also very reluctant to have a fragmentation of the function of the Attorney General and the Department of Justice.

I see a tendency in recent years for very nearly every agency that has an administrative responsibility to want to set up its own little law office, its own little department of justice, and if that were permitted to take place, we'd have a lot of satellite department of justice, each in its own orbit, independent, one of the other.

And I think we would have more chaos than order as a result. Will you give me a little more comment along those lines, please?

Mr. KELLER. I would be very happy to, Mr. Chairman. I think of the Department of Justice as the lawyer for the Government who takes cases into court for prosecution or to facilitate settlements on them.

Mr. DANIELSON. Would you speak more loudly or move the microphone up? There is a young lady back there in the next to last row I see is having trouble.

Mr. KELLER. Yes, sir. I do not see the Department of Justice in the role of administering every law. I am making a distinction between administration of the law and prosecution for violations of law.

Mr. DANIELSON. I understand.

Mr. KELLER. Certainly the Department of Justice, if they chose to, and if the Congress authorized them to, could take on both the administrative and prosecutive functions. That is an alternative.

Mr. DANIELSON. It is, but, you know, in keeping with our system, which works pretty well, of dividing powers, even within the executive branch we divide a few. And separating the power sometimes is wholesome. I was once a policeman, and you know there is nothing more frustrating on earth to a person in law enforcement than to know very well that a crime has been committed and to know very well that so and so did it, and yet not be able to get the warrants that you need.

It might be satisfying if you could to just go in and do what you feel you should do. But it is kind of wholesome sometimes to have to prepare an affidavit and specify when, where, why, who, and what and sign it. We may let a few offenses slip away that way, but in the long run I think we are all profiting by it.

I can see where, if GAO were having this enforcement power, it may sometimes wish to subpena, to obtain access to, take possession of certain records. It is quite a frustrating thing to know that there is something, and you know it up here in your head, but you have not seen it, and you go to the Department of Justice, and they won't back you up on the subpena.

I would frustrate right along with you on that. But I am not sure but what it's wholesome. I tell you what. I am going to make a suggestion to you. I wish you would, someone from your office would, talk this over with Justice not only in the context of H.R. 81, but Justice last week pointed out that they would have a few amendments they would like to offer, in the context of the amendments as well.

I think if we can resolve this little question, this big question, it would do a lot toward insuring the adoption and passage of this legislation. I want to suffix that with one comment. I think the Comptroller General's Office does very well. I think it is one of the agencies we can be very proud of in the Government.

I am fearful that if we let it adulterate its function with too many quasi-police functions, it will lose some of that excellent quality which it has as a General Accounting Office. And I am very reluctant to see the General Accounting Office getting into enforcement problems, except to the extent that they're absolutely necessary.

Can you tell me, do you have any similar authority?

Mr. KELLER. As far as subpena power is concerned?

Mr. DANIELSON. Yes.

Mr. KELLER. Yes, sir. We do under the Energy Act. We have access to certain records of energy companies, whether they have a contract with the United States or not. We also have subpena authority under the Social Security Act amendments of a year or two ago.

Mr. DANIELSON. In the Social Security Act and the new Energy Act?

Mr. KELLER. Yes, sir.

Mr. DANIELSON. What experience have you had along that line? Have you had any problems with it?

Mr. KELLER. We have found, Mr. Chairman, which I'm sure you know, once you have the subpena power, you rarely have to use it. In fact, we have had only one case where we issued subpenas, and that was under the Social Security Act. They were issued at the request of an official of the State of California who had the records we needed. He said, "I am willing to give them to you, but I would like to protect myself with a subpena."

Mr. DANIELSON. I am familiar with that routine.

Mr. KELLER. I wouldn't want to call it a club in the closet, but it is very helpful.

Mr. DANIELSON. I am going to make a suggestion. In fact, it is a request that you see if you can't have some conversation with Justice and work out a mutually acceptable division of the effort. I think it is potentially—it will be successful. I don't think the Department of Justice wants to have too many more responsibilities, particularly at this preliminary level of going out to check the records.

At the same time I am sure they are very jealous of their jurisdiction, and they should be. So if you could talk with them about that and possibly come up with a resolution, I would appreciate it, and I think the other members of the committee would.

Mr. KELLER. We would be very happy to give it a try, sir.

Mr. DANIELSON. Thank you very much. On this definition of expenditures which concerns you and concerns me, would you be kind enough to try to work out a little paragraph that you think would meet your needs and let us add that to our thoughts here?

Mr. KELLER. Certainly we would be very happy to, Mr. Chairman. We are trying to cut down the recordkeeping burden.

Mr. DANIELSON. I understand and I favor that.

Mr. KELLER. I think Justice made a similar comment last week, as I understand it.

Mr. DANIELSON. Definitions are very important in this bill, and I agree with you on the meaning of significant. It doesn't mean a cottonpicking thing; what may be significant to you may not be significant to me. Thank you. I have no questions. How about you, Mr. Barnes.

Mr. BARNES. No questions for Mr. Keller.

Mr. DANIELSON. Thank you. Thank you very much, gentlemen. Our next witness will be the American Civil Liberties Union, which is represented today by Mr. David Landau, staff counsel. Thank you, Mr. Landau, and if you have aides you wish to have with you, they are welcome.

Mr. Landau, you are welcome to proceed in whatever manner you wish; in order to unfetter you, I am going to say that, without objection, we will receive your statement in the record. You may read it or whatever you wish. You are free.

[The complete statement follows:]

SUMMARY OF STATEMENT OF DAVID E. LANDAU, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON OFFICE

I. INTRODUCTION

Lobbying is a constitutionally protected right. The government must prove a compelling interest before enacting any statute which may have the effect, though unintended of chilling the free exercise of that right. The general view that the public has a right to know about lobbying activity is not a substitute for a factual record establishing a compelling government interest in preventing criminal abuses in the legislative process. Assuming, however, Congress wishes to proceed with the legislation, we submit that:

1. Congress must not regulate the lobbying activities of small, local organizations which do not employ or retain a regular lobbyist.
2. Congress must not require the disclosure of contributors.
3. Congress must not regulate indirect efforts to influence the legislative process.
4. Congress must not impose criminal sanctions for failure to comply with the provisions of the Act.

H.R. 81 as amended by changes discussed in this statement, conforms to these principles and will provide for the disclosure of lobbying activities within the contours of the Constitution.

STATEMENT OF DAVID E. LANDAU, STAFF COUNSEL AMERICAN CIVIL LIBERTIES UNION, WASHINGTON OFFICE

The American Civil Liberties Union appreciates the opportunity to once again present its views on government regulation of lobbying. In the past two Congresses, governmental reform advocates have succeeded in persuading the House of Representatives to pass sweeping legislation requiring the disclosure of lobbying activities. The ACLU opposed these proposals because they overlooked fundamental First Amendment principles. H.R. 8494 as reported by the Judiciary Committee of the last Congress was a significant improvement over previous versions of the bill. However, the House of Representatives chose to add several onerous provisions to an already constitutionally suspect bill. Because of this, H.R. 8494 was never enacted. Congress has now had time to reflect on the enormous adverse impact H.R. 8494 would have had on the ability of citizens to communicate with their elected

representatives. The American Civil Liberties Union and the public interest community in general hopes that a sensible, relatively simple lobbying disclosure bill along the lines of H.R. 81 introduced by Congressmen Rodino and Danielson will be chosen by this Subcommittee. Any broader legislation will insure that the voice of citizen organizations, already overshadowed by more powerful interests, will be drowned out for the foreseeable future.

Introduction: The Need for Legislation

Although often portrayed as an evil influence on the legislative process, the lobbyist is exercising the constitutionally protected right to petition the government for redress of grievances. The First Amendment protects the activities of persons and organizations who attempt to present their points of view to elected officials. Our constitutional system puts great faith in the competition of ideas as the ultimate cleansing tool.

Ever since "Publius" wrote and published the Federalist Papers, a fundamental method of public advocacy has been anonymous political speech and association. Public disclosure of political affiliation and activity subjects those who hold unpopular views to harassment and retaliation, and thus discourages public debate on policy issues. The Supreme Court has recognized this, finding a right of associational privacy in the First Amendment. The Court has repeatedly struck down disclosure and registration statutes, whose effect, even if unintentional and indirect, is to chill the free exercise of First Amendment rights. The right of associational privacy is not absolute. Thus, the fact that the Constitution recognizes lobbying as a vital component of the democratic process does not mean that Congress is prevented from protecting itself against corrupting influences. However, because it seeks to regulate constitutionally protected activity, the efforts of Congress to protect itself must be as narrow as possible.

It is well established constitutional law that Congress bears a heavy burden in enacting legislation affecting the free exercise of First Amendment rights:

> there must be a compelling governmental interest;
>
> there must be a substantial correlation between that governmental interest and the information sought to be disclosed; and
>
> even if there is a compelling interest and the information sought is substantially related to that interest, the legislation must employ the least drastic means.

The Supreme Court rigorously applied these standards in the sections of the Federal Election Campaign Act (FECA) decision concerning the disclosure of political contributions and expenditures. *Buckley* v. *Valeo,* 424 U.S. 1 (1976). In its per curiam opinion, the Court began by stressing a fundamental point: ". . . we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. Subjecting FECA to exacting scrutiny, the Court held that governmental interests supporting disclosure of contributions and expenditures—prevention of corruption and the appearance of corruption in the electoral process—were sufficiently strong to uphold the validity of such requirements for political committees controlled by candidates.

However, when it came to other political committees (and individuals) whose activities are independent of federal candidates, the Court made an important distinction. Applying a First Amendment analysis, the Court held that contributions supporting such independent efforts are protected against compulsory disclosure unless the major purpose of those efforts is to nominate or elect candidates, and unless they involve communications that in express terms "advocate the election or defeat of a clearly identified candidate." 424 U.S. 80. Other independent expenditures, those which do not explicitly advocate election or defeat of a candidate, do not fall within "the core area sought to be addressed by Congress," 424 U.S. 79, and thus Congress cannot require their disclosure. Moreover, the Court invalidated expenditure limitations on organizations not under the control of a candidate and on personal funds of candidates on the ground that these provisions did not substantially relate to prevention of corruption.

In *Buckley,* the Supreme Court was able to find a compelling governmental interest with respect to candidate contributions and expenditures because Congress had provided a voluminous factual record of abuses of the electoral process. The Court, basing its decision on that factual record of abuses, upheld some provisions of FECA and invalidated others.

In drafting legislation on the public disclosure of lobbying, however, Congress has not met the standard of *Buckley* v. *Valeo.* There has been no Congressional fact-finding with respect to the lobbying process. There has been no careful identification of abuses in lobbying. Congress has not investigated the wide variety of methods other than direct lobbying utilized by the diverse organizations covered by these

proposals. Arbitrary lines have been drawn that sweep across universities, hospitals, churches, environmental groups and small businesses. We strongly urge that before Congress expands lobbying legislation, it should examine the facts about lobbying activities not only by large organizations such as the ACLU, but by small, local organizations and charitable institutions.

The general view that the people have the right to know about lobbyists and private organizations which spend large sums of money on lobbying is not a substitute for a factal record establishing a compelling governmental interest. Without this factual record, we submit that any public disclosure of lobbying bill which expands current law cannot withstand the scrutiny of established constitutional tests.

Since Congress seems determined to enact a new lobbying law without this factual examination, we suggest that it adopt the least onerous alternative by focusing its attention on gifts and direct contacts with members of Congress. In the final analysis, it is gifts and substantial money expended for direct contacts, not the advocacy of ideas, which corrupt or may have the appearance of corrupting the legislative process. For this reason, we believe that H.R. 81, with the amendments we will suggest in this statement, provides the most sensible approach to the disclosure of lobbying activity.

H.R. 81 (as well as H.R. 2302, introduced by Mr. Kindness) regulates only direct contacts with Members, officers and employees of the Congress. Activity aimed at the general public is not within the scope of the bill. The thresholds for triggering the Act's obligations require substantial expenditures of money and time in directly contacting legislators or their staffs. Therefore, only groups which significantly affect the legislative process by direct lobbying activity will be required to register and report. The other bills before the Subcommittee, on the other hand, regulate activity far beyond direct communication.

We will now examine the specific provisions of the proposals before the Subcommittee.

Thresholds for Registration and Reporting

Under H.R. 81, organizations which spend $2,500 on directly communicating with Congress and either retain an outside lobbyist or have at least one salaried employee who engages in lobbying communications on all or part of each of thirteen days in a quarterly filing period or two employees who engage in lobbying communications on all or part of each of seven days in a quarterly filing period would have to register as lobbyists.

This threshold is a substantial improvement over prior thresholds and should not be lowered. The $2,500 expenditure requirement means that small, local organizations, especially those heavily relying on volunteers, will not be forced to register under the Act. For those organizations compliance would be so burdensome that many would be deterred from lobbying.

For example, under H.R. 81, each registered organization would have to file quarterly reports on lobbying activity. Every registered organization, therefore, would have to maintain extensive records and institute intricate accounting and internal reporting procedures. The need to centralize recordkeeping and to track expenditures on lobbying will be too intimidating and too costly for many organizations. The threat of criminal sanctions is even more intimidating, especially to small or inexperienced citizen groups venturing into lobbying.

The $2,500 expenditure requirement assures that only groups that spend substantial sums of money for lobbying will have to register. Presumably these are organizations which are well enough organized so that the registration and reporting requirements are not so bewildering, intimidating or costly that they would consider refraining from lobbying. The thirteen days threshold insures that the organization employs at least one person whose regular duties include lobbying. Under the Mazzoli bill (H.R. 2497) these contacts are aggregated from all employees. This will place an overwhelming burden on organizations to monitor the lobbying activities of all employees. An organization which does not employ anyone who regularly contacts Congress, but only employees people who occasionally make a lobbying communication would be forced to log the activities of all employees in order to determine whether it meets the threshold on a particular quarter. We oppose such a burdensome approach.

Similarly, we oppose the threshold used by the Kindness bill (H.R. 2302). This threshold would require registration and reporting for organizations which spend $5,000 per quarter engaged in lobbying communications. Such a threshold would require organizations to record the time each employee spent making lobbying communications, to pro rate the different salary for each employee to that time and then to total all the figures in order to determine whether it is required to register. Each employee may make only two or three phone calls, yet that minimal activity

might cause the organization to be subject to the Act's provisions. We submit any threshold must insure that no organization will be required to register unless it has at least one employee whose regular duties include lobbying. This could be determined either through the thirteen days test of H.R. 81 or through the 20% test of H.R. 1180 of the 95th Congress.

Another issue in the threshold section of the bill is whether time spent preparing and drafting lobbying communications should be counted towards the threshold. H.R. 81 would count such time in the portion of the threshold pertaining to retained lobbyists, but would not count such time toward the portion of the threshold pertaining to employed lobbyists. We are opposed to inclusion of preparation time in the threshold. It will be virtually impossible to determine if a particular memorandum was intended to be issued for lobby communications. For example; if the ACLU prepares a memorandum on a case concerning the Federal Election Campaign Act, and later the same memo was used to prepare a lobbying communication on proposed amendments to that Act, there would be no way for the ACLU to prove that such a memorandum was not prepared for the purpose of drafting a lobbying communication.

The Committee Report accompanying H.R. 8494 does mitigate this problem to a certain extent. If the Committee chooses not to delete this provision, we urge the retention of the Report language on this provision and would also support an amendment to substitute the word "specific" for the word "express" on page 9, line 16 of H.R. 81.

Contributor Disclosure

In the last Congress, this Subcommittee eliminated the contributor disclosure provision from H.R. 8494, basing its decision on the constitutional principle that no individual should be forced to disclose his or her associational ties. As the Committee Report accompanying H.R. 8494 noted, the provision is constitutionally suspect because it does not meet the standards of *Buckley* v. *Valeo:*

> The principal difficulty with requiring disclosure of contributors' identities is that there is no rational relationship between the mechanical formula used to trigger disclosure and the purpose that disclosure in general is supposed to serve: the disclosure of significant amounts spent to directly influence the legislative process. Advocates of such specific disclosure assent that such a statutory requirement will identify the "major backers—those individuals or organizations that put up the "front money"—of concentrated direct lobbying campaigns. Apart from the merits of that reasoning, the formula, however, does not (nor, the committee believes, can it) distinguish between those who pool their resources with the specific intent to directly influence legislation and those who associate for other reasons and whose money is neither sought nor received with such intent. The privacy and group associational rights of the latter would be most affected by a contributor-identity disclosure requirement. If a generous donor becomes hesitant to support an organization of his choosing in principal because the organization has incident to its general objectives, or may at some time in the future attempt to influence legislation, the benefactor's right to dedicate his resources to associational advocacy is prejudiced. (House Report No. 95-1003, p. 53).

We agree with the Committee's analysis and will not belabor the discussion of the constitutionality of contributors' disclosure. For our analysis please refer to our Memorandum of Constitutional Law on Contributor Disclosure, attached as Appendix A. Suffice it to emphasize that regardless of whether the provision applies to individual organizations or just organizations, the enforcement of any contributor disclosure section presents significant constitutional problems. The Attorney General is required to determine whether an organization is complying with these reporting provisions regardless of the actual information that is disclosed. To do so, he will have to have access to the entire membership list of an organization. The enforcement provisions, therefore, present the very constitutional problem encountered by the Supreme Court in *NAACP* cases discussed in Appendix A, and will not survive constitutional attack.

Direct versus indirect lobbying

During consideration of the lobbying bill in the last Congress, the House Judiciary Committee overwhelmingly adopted an amendment by Congressman Don Edwards (D-CA) deleting the requirement that activities known generally as "lobbying solicitations" be disclosed. "Lobbying solicitations" typically include the efforts by organizations to require, encourage or solicit others to make direct contacts with Members of Congress and their staffs.

The House of Representatives reinserted that provision. H.R. 81 and H.R. 2302 adopt the Judiciary Committee's position while H.R. 1979 (introduced by Mr. Railsback and Mr. Kastenmeier) and H.R. 2497 adopt the full House of Representatives position. We agree with the Judiciary Committee and submit that any disclosure of lobbying solicitation would be unconstitutional. Our Memorandum of Constitutional Law on this issue is attached as Appendix B.

We would like to emphasize that the Supreme Court has never permitted such extensive government regulation of indirect efforts to influence the legislative or elective process. Decisions of the present Court as well as a line of earlier cases over a twenty year period strongly indicate that the Court would strike down Congressional efforts to regulate lobbying solicitation.

In *United States* v. *Rumely,* 345 U.S. 41 (1953), the Court held that the authority of a Congressional Committee investigating lobbying was limited to the investigation of direct efforts to influence legislation, that is, contacts with Members of Congress. Similarly, in *United States* v. *Harris,* 347 U.S. 612 (1954), the Supreme Court construed the Federal Regulation of Lobbying Act, in accordance with the First Amendment, to reach only "lobbying in its commonly accepted sense—direct communication with Members of Congress on pending or proposed federal legislation". Recently, in the Federal Election Campaign Act (FECA) litigation, the United States Court of Appeals for the District of Columbia Circuit invalidated a portion of FECA which would have required the disclosure of indirect efforts to affect the electoral process. The Supreme Court approved this aspect of the decision below in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), and this implicitly precluded compulsory disclosure of activities addressed to the general public.

H.R. 1979 and H.R. 2497 would require citizen organizations to disclose and register with the Government their political literature and private communications with their own members if the literature or communication contained a request to write to Congress. Moreover, criminal sanctions will attach for failure to do so. This type of government regulation and surveillance of lawful political activity will be unprecedented. The Supreme Court has never permitted it, and Congress has never enacted legislation of this scope. Organizations which communicate with their members regarding federal legislation are performing the vital function of encouraging citizen participation in the legislative process. The response to a lobbying solicitation is the purest form of the right to petition the government, and the regulation of lobbying solicitation dampens the free exercise of this right.

In the last Congress the Judiciary Committee agreed with this analysis. We strongly urge the Subcommittee not to insert any provision requiring disclosure of grassroots lobbying into H.R. 81 and would oppose any bill that contains such a provision.

Enforcement and Sanctions

H.R. 81, H.R. 1979, and H.R. 2497 all permit criminal sanctions to be imposed for a knowing and willful violation of the Act. We believe that a sentence of imprisonment is entirely inappropriate for this Act. In effect, violators would be incarcerated for exercising their constitutionally protected rights. Moreover, the mere presence of criminal sanctions will frighten many away from lobbying, regardless of whether the particular organization is actually required to register. If the purpose of the Act is "disclosure", then the sanctions should be related to that purpose. Accordingly, injunctive relief to compel reporting coupled with fines for not doing so are sufficient sanctions.

We therefore support the sanctions section of the Kindness bill, H.R. 2302, which utilizes only civil penalties. We are pleased to note that the Department of Justice supports the elimination of criminal penalties for a violation of the Act.

Since the Department of Justice proposal also substantially revamps the enforcement mechanism of H.R. 81, we would like to comment on it.

The enforcement provisions of the lobbying bill should have effective informal methods of resolving disputes. The burdens of litigation contribute to the chilling effect of this legislation on the constitutionally protected right to lobby. Thus, we have always supported the conciliation provisions of prior proposals and of all proposals presently before the Committee. At the same time, the Justice Department maintains that with the elimination of criminal sanctions it has no way to obtain evidence of violation other than by normal discovery obtainable after filing a civil suit. The Department, therefore, proposes the authorization of pre-litigation discovery through the use of civil investigative demands (CID).

If such an approach is to be adopted it is our judgment that it must be narrowly drafted to meet constitutional objections.

First, the CID must be approved by the Attorney General, the Deputy Attorney General, or Assistant Attorney General. We oppose the Justice Department proposal to permit lower-level Justice Department officials to authorize the CID's. Second, no

CID should be authorized unless there has been a specific finding that there are facts or circumstances that a person may be violating or may have violated the Act. In other words, there must be a preliminary investigation which results in a determination that there may be violation of the Act before a CID may be authorized. Third, an organization should have a right to judicial review of the CID in the form of a motion to quash. Fourth, the CID should only be issued against organizations against which an investigation has been instituted, or any officer, director, employee, or retainee, but not to other third party record holders. The Department of Justice agrees with the latter three suggestions. Finally, there should be periodic review of the investigation beginning 60 days after any investigation commences.

The Justice Department has also proposed to eliminate the conciliation provisions and replace them with a 30 day notice provision when court action is contemplated. However, under this proposal if an organization corrected the violation after it was notified, it could still be prosecuted for civil fines. We think this is extremely unfair, particularly for those organizations which have violated for the first time. Since the proposed standard of culpability is low, i.e. knowing, an organization may be prosecuted even though it was unaware of the new law.

If the Subcommittee chooses to delete conciliation—an amendment which we would oppose—we suggest at the very least that it insert a bar to prosecution when an organization has been given notice of any alleged violation of the Act for the first time and then has corrected the alleged violation. A good faith defense similar to the one proposed by the Justice Department would protect against punishing unintentional violations, but would not bar prosecution.

Miscellaneous provisions

In a few weeks the ACLU will be submitting to the Subcommittee a number of other specific suggestions for improving H.R. 81. These will include narrowing the definition of affiliate by conforming it to the definition used in the lobbying provisions of the Internal Revenue Code; narrowing the definition of expenditure by eliminating costs of overhead; narrowing the definition of lobbying communication by exempting paid advertisements; extending the time allotted for registration from 15 to 30 days; tightening the record-keeping provisions by requiring maintenance of only such records as are essential for compliance with the Act (See Sec. 5, H.R. 2302); deleting the provisions relating to cross-indexing of information gathered under this Act with information reported under the Federal Election Campaign Act; insuring that Sec. 1001 of Title 18, United States Code which criminalizes false statements to law enforcement officers is not applicable; and easing the recordkeeping burden on organizations exempt from taxation under Sec. 501(c)(3) of the Internal Revenue Code by permitting such organizations to report information submitted for the IRS in lieu of the financial reporting required under the lobbying bill. Finally, the ACLU would oppose insertion of any provision requiring the disclosure of more information than currently required by H.R. 81 particularly the provisions of H.R. 1979 which require reporting of a breakdown of which lobbyists worked on a particular issue and reporting of the lobbying activity of voluntary chief executive officers.

Conclusion

If Congress insists on regulating lobbying as part of its effort to reform the political process, then it must be sensitive to the prohibitions and limitations the Constitution places on its power to regulate the rights of individuals to freely associate and express political ideas. We submit that:

1. Congress must not regulate the lobbying activities of small, local organizations which do not employ or retain a regular lobbyist.
2. Congress must not require the disclosure of contributors.
3. Congress must not regulate indirect efforts to influence the legislative process.
4. Congress must not impose criminal sanctions for failure to comply with the provisions of the Act, and should provide for informal methods of settling disputes arising from enforcement of the Act.

H.R. 81 as amended by changes discussed in this statement, conforms to these principles and will provide for the disclosure of lobbying activities within the contours of the Constitution.

Justice Brennan in *New York* v. *Sullivan*, 376 U.S. 259 (1969) wrote of a profound national commitment to the principle that "debate on public issues should be uninhibited, robust and wide-open." Believing in this principle, the Founding Fathers provided constitutional guarantees of free speech and the right to petition the government. In its quest for reform, Congress must not constrain these fundamental rights of the American democratic system.

Thank you.

APPENDIX A

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., April 18, 1978.

MEMORANDUM

Re H.R. 8494

CONSTITUTIONALITY OF RAILSBACK AMENDMENT ON CONTRIBUTOR DISCLOSURE

This memorandum concerns the constitutionality of Congressman Railsback's amendment to require that lobbying organizations under H.R. 8494 disclose their contributors. It is our conclusion that any contributor disclosure provision is unconstitutional based on a long line of Supreme Court cases.

The landmark case in this area is *NAACP* v. Alabama ex rel. Patterson, 357 U.S. 449 (1958), where the Supreme Court first recognized the right of associational privacy. In that case it reversed a contempt of court conviction of the NAACP for refusing to disclose its membership list. Speaking for a unanimous Court, Justice Harlan said that the inviolability of privacy in group associations is indispensable to the preservation of freedom of association.

The holding of *NAACP* v. *Alabama* was affirmed in several subsequent cases. In *Bates* v. *Little Rock*, 361 U.S. 517 (1960), the Supreme Court unanimously invalidated another contempt conviction of the NAACP based upon its refusal to furnish city tax officials with membership lists. Again, in *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293 (1961), the Court unanimously affirmed a lower court decision enjoining the enforcement of a statute requiring the disclosure of NAACP membership lists. See also *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963), where the Supreme Court suggested that it would approve membership disclosure only where there was a very specific and formal investigation of criminal or subversive activity, as in the Communist Party case. (*Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961).

The principle that emerges from the NAACP cases is that each and every American citizen has the right to associate with whomever he or she chooses and to be anonymous in those associations. The purpose of, and the activities resulting from, these associations are irrelevant. This principle has been applied in a variety of situations. In *Shelton* v. *Tucker*, 364 U.S. 479 (1960), the Court invalidated an Arkansas statute which compelled teachers to disclose all their organizational affiliations for the last five years. In *Talley* v. *California*, 362 U.S. 60 (1960), the Court ruled "unconstitutional on its face" a Los Angeles ordinance prohibiting anonymous distribution of any handbill.

In sections of the recent Federal Election Campaign Act decision, *Buckley* v. *Valeo*, 424 U.S. 1 (1976), concerning the disclosure of political contributions and expenditures, the Supreme Court dealt with analogous issues. It began by stressing a fundamental point: " . . . we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. The Court held that governmental interests supporting disclosure—informing the public about sources and uses of political money, thereby helping to eliminate corruption—were sufficiently strong to uphold the validity of such requirements through political committees controlled by candidates.

But when it comes to other political committees and individuals whose activities are independent of federal candidates, the Court in *Buckley* made an important distinction. Applying a First Amendment analysis, the Court held that such independent efforts have to be disclosed only if the major purpose of those efforts is to nominate or elect candidates, and only if they involve communications that, in express terms, advocate the election or defeat of a clearly identified candidate. Through this narrow construction, the Court made it clear that it would not tolerate a contributor disclosure statute that affected the funding of every conceivable general interest organization engaged in political activities. In other words, the governmental interest in disclosure of names of contributors to independent committees is not substantial enough to outweigh the prohibitions of the First Amendment.

It has been argued that there is a substantial governmental interest in disclosure of financial backers of lobbying organizations in order to determine the sources of the influence on Congress. However, there is no evidence that contributors of a mere $3,000 to organizations such as the NAACP or the Lutheran Church are attempting to corrupt the legislative process. Congress has failed therefore to establish a *compelling* governmental interest in the disclosure of contributors as required by the Supreme Court in the *Buckley* case.

In the context of the First Amendment, moreover, the Supreme Court has imposed the additional requirement of "less drastic means." In *Shelton* v. *Tucker*,, 364 U.S. 429, 488 (1960), the Court held that "even though the governmental purpose by legitimate and substantial, that purpose cannot be pursued by means that stifle fundamental personal liberties when the end could be more narrowly achieved. The breadth of the legislative abridgement must be viewed in the light of the less drastic means for achieving the same basic purpose."

The contributor disclosure amendment to H.R. 8494 clearly does not meet this test. The disclosure of all contributors who donate over $3,000 to an organization is "drastic" because in most organizations those who contribute over $3,000 or more could not in any sense control the organization. Nor could those who contribute 1% or even 5% of the total contributions of an organization be said to "control" the organization.

The contributor disclosure provision is also overbroad because it would require disclosure of all amounts over $3,000 without regard to actual utilization of the funds. In general interest organizations only a small percentage of each contribution is devoted to lobbying. A $3,000 contribution to the ACLU, for example, would be used to finance a variety of activities that have nothing to do with lobbying. Moreover, such a contribution to the ACLU would be utilized in a different way from a $3,000 contribution to a smaller or different organization, such as the Sierra Club or the American Council on Education. Disclosure of these contributions has little, if any, correlation to the apparent purposes of the Act, thus does not conform to the standards set by the Supreme Court.

Enforcement of any contributor provision presents additional constitutional problems. The Comptroller General is required to determine whether an organization is complying with these reporting provisions regardless of the figures involved in the contributions. To do so, he will have to have access to the entire membership list of an organization. The enforcement provision, then, presents the precise fact pattern of the NAACP cases and is, in our view, flatly unconstitutional.

Finally, perhaps the most compelling argument against the contributor disclosure amendment is the chilling effect it would have on First Amendment rights. To take a hypothetical example, John Smith, a senior Vice President of the Northern California Lumbering and Paper Mill Corporation, believes that redwood trees are some of America's most beautiful and historic natural resources. He has attempted a number of times to change company policy which currently opposes the expansion of the Redwood National Forest. However, he has been unsuccessful in his efforts. Not believing that this issue is one to resign his position over, Mr. Smith decides to contribute a substantial amount of money to the Save-the-Redwood Society to aid them in their fight for the expansion of the Redwood National Forest. This contribution consists of a little over 5% of the total contributions of the Society for the year, and because of the large amount of lobbying activity in the Redwood National Forest this Save-the-Redwood Society is required to register under the lobbying disclosure act. If a contributor disclosure provision were included in the act, John Smith's name would have to be published in the Federal Register. One can easily see that such disclosure would probably cause severe repercussions for John Smith and possibly mean the loss of his job.

The contributor disclosure provisions would thus have a crippling effect on many organizations throughout the country. Because the right of Americans to freely associate and participate in organizations must not be abridge or discouraged, the contributor disclosure amendment should be rejected.

Appendix B

American Civil Liberties Union
Washington, D.C., April 19, 1978

Memorandum

Re H.R. 8494

CONSTITUTIONALITY OF FLOWERS AMENDMENT ON LOBBYING SOLICITATIONS

This memorandum concerns the constitutionality of the Flowers Amendment to require that lobbying organizations under H.R. 8494 disclose their solicitation efforts. It is our conclusion that this amendment is unconstitutional.

"Lobbying solicitations" typically include the efforts by organizations to require, encourage or solicit their members and others to make their views known to members of Congress or their staffs. The Supreme Court has never permitted government regulation of such indirect efforts to influence the legislative or elective process. Decisions of the present Court as well as earlier cases make it quite likely

that the Court would strike down Congressional efforts to regulate lobbying solicitations.

In *United States* v. *Rumely*, 345 U.S. 41 (1953), the Court considered the scope of the authority of the House Select Committee on Lobbying Activities to investigate the adequacy of the lobbying Regulation Act. One group under investigation refused to comply with a Committee subpoena which purported to require disclosure of bulk purchasers of their books. The group's main purpose, in the words of the Committee, was "distribution of printed material to influence legislation indirectly." To avoid raising serious constitutional questions, the Court drastically narrowed the scope of the House resolution authorizing the investigation of "all lobbying activities intended to influence, encourage, promote or retard legislation." It did so because ". . . the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of the constitutionality in view of the prohibitions of the First Amendment." 345 U.S. at 46. Adopting the language of the Court below—which had held the resolution unconstitutional—the Supreme Court read the phrase "lobbying activities" to mean " 'lobbying in its commonly accepted sense,' that is "representations made directly to the Congress, its members, or its Committees'." Id. at 47.

One year later, the Supreme Court, in *United States* v. *Harriss*, 347 U.S. 612 (1954), applied the same construction to the language of the Federal Regulation of Lobbying Act itself. Several persons had been indicted under the Act for failure to report expenditures related "to the costs of a campaign to communicate by letter with members of Congress on certain legislation." 347 U.S. at 615. The Court took care not "to deny Congress in large measure the power of self-protection" by preventing Congress from any regulation of lobbying. 347 U.S. 625. But, as in *Rumely*, Chief Justice Warren limited the reach of the Act to cover only " 'lobbying in its commonly accepted sense'—to direct communication with members of Congress on pending or proposed Federal legislation." 347 U.S. 620.

The Supreme Court has not faced the issue of lobbying since the *Harriss* decision. The issue of regulation of efforts to influence public opinion has been addressed, however, by several lower courts.

The Court of Appeals in *Buckley* v. *Valeo*, 519 F.2d 821 (D.C. Cir. 1975), dealt with an analogous provision in the original Federal Election Campaign Act. Section 308 of FECA required disclosure by any group that committee "any act directed to the public for the purpose of influencing the outcome of an election or publication or broadcast of any material that is designed to influence individuals to cast their votes for or against such candidate or to withhold their votes from such candidate." 519 F.2d at 870.

The section was held flatly unconstitutional by the Court of Appeals. As part of the rationale, the Court cited the Second Circuit opinion in *United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir. 1972). In that case the Second Circuit had narrowly construed the section of the 1971 FECA requiring disclosure of activities aimed at the public by political committees. The Second Circuit said a broader reading of this section would result in an enormous interception of activities protected by the First Amendment:

> . . . Every position on any issue, major or minor, taken by anyone would be a campaign issue and any comment upon it, in, say, a newspaper editorial or an advertisement, would be subject to proscription unless the registration and disclosure were complied with. Such a result would, we think, be abhorrent; . . . Any organization would be wary of expressing any viewpoint lest under the Act it be required to register, file reports, disclose its contributors, or the like. On the Government's thesis every little Audobon Society Chapter would be a "political committee" for "environment" is an issue in one campaign after another. On this basis, too, a Boy Scout troop advertising for membership to combat "juvenile delinquency" or a Golden Age Club promoting "senior citizens rights" would fall under the Act. The dampening effect on First Amendment rights and the potential for arbitrary administrative action that would result from such a situation would be intolerable. 469 F.2d 1142.

Similarly, in *ACLU* v. *Jennings*, 366 F.Supp. 941 (D.D.C. 1975), vacated as moot sub nom., *Staats* v. *ACLU*, 422 U.S. 1030 (1975), a three-judge district court was faced with a challenge to the 1971 FECA. The court perceived the same constitutional obstacles and adopted the same narrow interpretation propounded in *National Committee for Impeachment*.

Applying the principles in these decisions to the solicitation disclosure requirement of the Flower Amendment, we submit that Congress has not met the burden of justifying these provisions.

First, there is no demonstrated compelling governmental interest in the requirements because there is no factual record of abuse in lobbying solicitations. On the contrary, such efforts are beneficial. A lobbying solicitation begins with the effort to inform and educate the public on federal legislation. This public debate on issues is protected by the First Amendment and any regulation of it would interfere with the exercise of Constitutional rights. If an organization at the same time asks others to support its views and to write Congress saying so, that is also public debate protected by the First Amendment.

This type of activity ought to be encouraged, not regulated. Civil rights, anti-Vietnam war and impeachment movements all relied heavily on this type of activity to generate public support. Even the passage of the Constitution was spurred by anonymous grassroots lobbying such as the essays published as the Federalist Papers. If people respond to such a campaign, even if with a form letter, these people must believe in the position offered or at least sufficiently believe in the general goals of that organization initiating the solicitation to trust its judgment. Congress should not pass judgment on the value of these views. This individual response to a lobbying solicitation is the purest form of the right to petition the government.

Moreover, the lobbying solicitation provision will force overwhelming recordkeeping upon organizations, thus causing them to curtail or even halt their attempts to inform the public on vital public policy issues. Tracking of grassroots lobbying is virtually impossible, yet organizations would be under the threat of criminal sanctions for not filing accurate reports. The Flower Amendment therefore fails to utilize the least drastic means to effectuate the purpose of the statute, another requirement the Supreme Court imposed on legislation affecting First Amendment rights. Accordingly, disclosure of lobbying solicitations is unconstitutional and the Flower Amendment should be rejected.

TESTIMONY BY DAVID LANDAU, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON OFFICE

Mr. LANDAU. Thank you, Mr. Chairman. I would like to have it read into the record, and I would briefly have a brief presentation and then be able to answer some questions.

As you know, Mr. Chairman, the American Civil Liberties Union in the past 2 years has been very concerned about lobbying disclosure legislation, and we have worked very closely with this committee in attempting to improve various proposals, and we appreciate the opportunity once again to present our views on this important issue.

In the past two Congresses governmental reform advocates have succeeded in persuading the House of Representatives to pass sweeping legislation requiring the disclosure of lobbying activities. The ACLU has opposed these proposals because they overlooked fundamental first amendment principles.

It is true H.R. 8494, as reported by the Judiciary Committee of the last Congress was a significant improvement over previous versions of the bill, and we commend the chairman and this subcommittee for the fine work in improving that bill; however, the House of Representatives chose to add several onerous provisions to an already constitutionally suspect bill.

Because of this H.R. 8494 was never enacted. Congress has now had time to reflect on the enormous adverse impact H.R. 8494 would have had on the ability of the citizens to communicate with their elected representatives.

The ACLU and public interest community in general hold that sensible, relatively simple lobbying disclosure bills along the lines of H.R. 81 will be chosen by the subcommittee.

Any broader legislation will insure that the voice of the citizen organizations already overshaded by more powerful interests will be drowned out for the foreseeable future.

I would like to briefly discuss the ACLU's views on the need for this legislation as requested by the chairman and his invitation to testify. It is a well established constitutional law that Congress bears a heavy burden in enacting legislation.

Although this proposed statute has not involved any prohibition on speech, the Supreme Court has repeatedly recognized that disclosure statutes can have a significant adverse impact on the free exercise of the first amendment rights, as it began its opinion in *Buckley* v. *Valeo,* the case concerning the constitutionality of the Federal Election Campaign Act, and I quote,

> We have repeatedly found that compelled disclosure in itself can seriously infringe on privacy of the associations and beliefs guaranteed by the First Amendment.

The first question the Supreme Court would ask, and I encourage this subcommittee to ask, is what is the compelling governmental interest in lobbying disclosure. The interest can't be merely legitimate. More important, it must be compelling. We have a great deal of difficulty finding one.

Lobbying, which we would define as the advocacy of ideas, is not corrupting. Gifts by lobbyists, campaign contributions by lobbyists may be corrupting or have the appearance of corruption, but they are dealt with by other statutes.

The Supreme Court found a compelling interest in protecting the integrity of the electoral process. They found this interest there because Congress had established an extensive factual record of abuse and corruption in campaign contributions.

Without this record we doubt the Supreme Court would have upheld the portion of the statute which it did and drafting the legislation on the public disclosure of lobbying; however, Congress has not met the standards of *Buckley* v. *Valeo.* There has been no congressional factfinding with respect to the lobbying process and no careful identification of the abuses in lobbying.

And the general view that the people have a right to know about lobbyists and private organizations which spend large sums of money lobbying is not a substitute for a factual record establishing the compelling governmental interests.

I would like to stress this point, that the public's right to know is not a constitutional right. It is a statutory re-created right, and as such Congress bears a heavy burden to prove not only compelling governmental interest in obtaining information, but that the information sought will benefit that particular interest. Without a factual record of abuse, we submit that any public disclosure of lobbying bills which expands upon public law cannot withstand the scrutiny of constitutional test.

We recognize, however, that in the past Congress has been determined to enact a new lobbying law without this kind of examination, so therefore we suggest that it adopt the least onerous alternative by focusing its attention on gifts and direct contacts with Members of the Congress.

In the final analysis, it is gifts and substantial money expended for direct contacts which corrupt. We believe that H.R. 81, with the amendment we suggest in our statement, provides the most sensible approach to disclosure of lobbying activity.

H.R 81 and 2302, as introduced by Mr. Kindness, speculates only direct contacts with Members, officers, and employees of the Congress. Activity aimed at the general public is not within the scope of the bill. The thresholds for triggering the act's obligations require substantial expenditures of money and time and directly contacting legislators or their staffs; therefore, only groups which significantly affect the legislative process by direct lobbying activity will be required to register and report. The other bills before the subcommittee, on the other hand, regulate activity far beyond direct communication.

We will now examine the specific provisions of the proposals before the subcommittee. In the area of thresholds for registration and reporting, the threshold of H.R. 81 is a substantial improvement over prior thresholds and should not be lowered.

The $2,500 expenditure requirement means that small, local organizations, especially those heavily relying on volunteers, will not be forced to register under the act. For those organizations compliance would be so burdensome that many would be deterred from lobbying.

Presumably, the large organizations are well organized enough so that the registration and reporting requirements are not so bewildering, intimidating or costly, so that they would consider refraining from lobbying.

The 13-day threshold insures that the organization employs at least one person whose regular duties include lobbying. Under the Mazzoli bill these contacts are aggregated from all employees.

This will place an overwhelming burden on organizations to monitor the lobbying activities of all employees. An organization which does not employ anyone who regularly contacts Congress but only employs people who occasionally make a lobbying communication would be forced to log the activities of all employees in order to determine whether it meets this threshold on a particular quarter.

We oppose such a burdensome approach.

Mr. DANIELSON. Let me interrupt for just a moment and give you a hypothetical situation which we hear all the time—the people who visit our office. Suppose a lobbying organization had 10 employees, each of whom put in 6 days but didn't cross that 7-day threshold. That is a lot of lobbying, and you know you can expand that to absurdity, if you want to, but 10 is enough. You get the point. Comment on that, would you please?

Mr. LANDAU. This bill is trying to draw a line, and I agree it is an arbitrary line, but it has to be drawn of what is the minimal amount of lobbying activity that Congress is going to require people to disclose or what they're going to require the disclosure statute to cover.

In drawing that line, it depends on what your own opinion is of small or large amounts of lobbying activity. We believe we shouldn't cover an organization unless it really has a lobbyist.

Mr. DANIELSON. Let me interrupt again, and forgive me for interrupting, but I don't know that we are right on target here. Yesterday we had a recision bill up. One of the interesting features had to do with providing subsidies for training nurses.

Suppose, and this is strictly a supposition—I don't think there is any organized effort and no problem, but let's just suppose that a nurse's group did bring in, let's say, 50 people to lobby all last year. You are talking about 250 days. We weren't here that much. 200 days, that is a lot of lobbying, maybe not significant, but to me that is quite a bit. How would you bring that sort of thing?

Mr. LANDAU. I question whether any—many organizations would bring maybe 75 or 50 or 100 employees to Washington.

Mr. DANIELSON. I have a better example. Airline Pilots Association, when they descend on the Capitol, you can get 50 in one day, and they are all working for the same organization.

Mr. LANDAU. It seems to me, if that was the only activity they were engaging in, they didn't have a Washington office, didn't have anybody on the Hill——

Mr. DANIELSON. I don't know where they come from, but when they land, it's like locusts.

Mr. LANDAU. They should not register. That is my opinion. That is not enough activity.

Mr. DANIELSON. That is an honest answer and an honest question, and you always give the horror cases and hypotheticals, and that is the hypothetical situation. You stated it clearly. You don't think they ought to have to register. Go ahead. I appreciate your comment.

Mr. LANDAU. My next point was going to discuss briefly the Kindness threshold, which would be going back to 5 years ago, the original proposal to use an all dollar threshold. We would oppose that move for the same reason we would oppose the Mazzoli threshold of aggregating. It is the same problem, because to take your Airline Pilot Association, the burden of determining whether an organization like that would have to register, they would have to take every employee when they made one phone call to Congress, then they would have to prorate the time that that person spent on the telephone and take all the dollar figures and add them all up.

And that is how they would determine how to register. They couldn't focus their attention on determining whether they had to register on particular employees who were assigned a responsibility or they knew who were assigned the responsibility of contacting Congress.

I think the 13-days test is one way to do it. Another way to do it was the old 20-percent test, or you can reduce that number to 15 percent. I think that sort of shows the model I am talking about, that you have one employee or two employees at half that level.

On the issue of contributor disclosure, to move on to reporting deficiencies in the last Congress, the subcommittee eliminated the contributor disclosure provision from H.R. 8494, basing its decision on the constitutional principle that no individual should be forced to disclose his or her associational ties.

As the Commission report adequately deals with the constitutional implication of any contributor-disclosure commission, we agree with the subcommittee on the analysis at the last session and will not belabor the discussion of the constitutionality of contributors' disclosures, and I refer you to our memoranda which is attached as appendix A.

Suffice it for me to emphasize that, regardless of whether the provision applies to individual organizations or just organizations, the enforcement of any contributor disclosure section presents significant constitutional problems. The Attorney General is required to determine whether an organization is complying with these reporting provisions regardless of the actual information that is disclosed.

To do so, he will have to have access to the entire membership list of an organization. The enforcement provisions, therefore, present a very constitutional problem encountered by the Supreme Court in NAACP cases discussed in appendix A and will not survive constitutional attack.

On the issue of direct versus indirect lobbying, grassroots lobbying, lobbying solicitation, during the consideration of the lobbying bill in the last Congress the House Judiciary Committee overwhelmingly adopted an amendment by Congressman Donald Edwards, deleting the requirement that activities known generally as lobby solicitations be disclosed.

The House of Representatives reinserted that provision. H.R. 81 and H.R. 2302 adopted Judiciary Committee's position, while H.R. 1979, introduced by Mr. Railsback and Mr. Kastenmeier, and H.R. 2497 adopt the full House of Representatives' position.

We agree with the Judiciary Committee and submit that any disclosure of lobbying solicitation would be unconstitutional. Our memorandum of constitutional law on this issue is attached as appendix B.

I would like to emphasize that the Supreme Court has never permitted such extensive Government regulation of indirect efforts to influence the legislative or elective process. Decisions of the present court as well as a line of earlier cases over a 20-year period strongly indicate that the court would strike down congressional efforts to regulate lobbying solicitation.

But aside from the question of whether the Supreme Court would strike down this provision and, as the committee report noted last year, this is a matter of constitutional policy, H.R. 1979 and H.R. 2497 would require citizen organizations to disclose and register with the Government their political literature and private communication with their own members.

Moreover, sanctions were attached for failure to do so. This type of Government regulation and surveillance of lawful political activity will be unprecedented.

We view this as nothing less than a frontal assault on the democratic process itself. Organizations which communicate with their members regarding Federal legislation are performing the vital function of encouraging citizen participation in the legislative process.

The response to a lobbying solicitation is the purest form of the right to petition the Government. The Government simply has no business interfering in any way with the free exercise of this constitutional right.

In the last Congress the Judiciary Committee agreed with this analysis. We strongly urge the subcommittee not to insert any provision requiring disclosure of grassroots lobbying into H.R. 81 and would oppose any bill that contains such a provision.

On the issue of enforcement and sanction, in response to some of the comments by the previous witnesses, I would just note, and I have to mention this in my statement, we support the enforcement division vesting solely to the Department of Justice, and we object to giving any kind of law enforcement procedure or ability or power to the Comptroller General of the United States.

In the context of this particular bill we also believe that it is a sentence of imprisonment; that is, criminal sanctions are entirely inappropriate for this act, aside from the question of whether people should be imprisoned for not filing lobbying reports.

The mere presence of criminal sanctions in this bill will frighten many away from lobbying, regardless of whether the particular organization is actually required to register. If the purpose of the act is disclosure, then the sanctions should be related to that purpose.

Accordingly, injunctive relief to compel reporting coupled with fines for not doing so are sufficient sanctions. We therefore support the sanction section of the Kindness bill, H.R. 2302, which utilizes only civil penalties. We are pleased to note that the Department of Justice supports the elimination of criminal penalties for violation of the act.

Since the Department of Justice proposal also substantially revamps the enforcement mechanism of H.R. 81, we would like to comment on it. I've made a number of specific comments in my statement about that, two important points, and that is, first, the lobbying bill should have effective and formal methods of resolving disputes.

The burdens of litigation contribute to the chilling effect of this legislation on the constitutionally protected right to lobby. Thus we have always supported the conciliation provisions of prior proposals and of all proposals presently before the committee.

At the same time the Justice Department maintains that with the elimination of criminal sanctions it has no way to attain evidence of violation other than the normal discovery obtainable after filing a civil suit.

The Department, therefore, proposes the authorization of prelitigation discovery through the use of civil investigation demands. If this subcommittee adopts that approach, it would have to be narrowly drafted, and I have suggested a number of ways to do that in my statement.

The Justice Department has also proposed to eliminate the conciliation provision and replace them with the 30-day notice provision when court action is contemplated; however, under this proposal, if an organization corrected a violation after it was notified, it could still be prosecuted for civil fines.

We think this is extremely unfair, particularly for those organizations which have violated for the first time. Since the proposed standard of culpability is knowing, and that is very low, an organization may be prosecuted even though it was unaware of the new law.

If the subcommittee chooses to delete conciliation, an amendment which we would oppose, we suggest at the very least that it insert a power to prosecution when an organization has been given

notice of any alleged violation of the act for the first time and then has corrected the alleged violation.

In short, while the ACLU will be submitting to the subcommittee a number of other specific suggestions for improving H.R. 81—I have described them in my statement—many of those have to deal with definitions. I am available now to answer any questions you may have.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. I am inclined to agree with you, on the grassroots issue. However, if we only use expenditures as the threshold standard, isn't that an advantage for many groups that have volunteers working for them virtually full time or at least on a regular basis? Don't they have a tremendous advantage in who has to report activities and who doesn't?

Mr. LANDAU. Well, Mr. Moorhead, I think it is again a question of drawing lines on where is the impact of this legislation going to be most severe.

In the past Congress has made the determination that they would exclude volunteers from the act because they are not being paid to lobby. The *Harris* case makes it very clear that they upheld the current law on lobbying because the Congress needed to know who was being paid to lobby to go before Congress and who was paying those particular people to appear before Congress.

We would agree with that position. I know I agree with you that it does exempt a number of organizations, but it just doesn't affect so-called public interest groups alone. Many national business organizations which maintain—trade associations, for example—utilize the voluntary efforts of local businesses to do much of their lobbying.

Also I think it affects everyone, and it's been official to the lobbying process not to in any way burden that voluntary agency's effectiveness.

Mr. MOORHEAD. There is no question it could be just as effective as lobbying by some of these pay people, maybe more so sometimes.

Mr. LANDAU. I don't think this act will tell you which is most effective lobbying. It will only tell you who is spending the most money to try to be effective. Lobbying is a large part of the reputation of organizations that are lobbying.

Mr. MOORHEAD. There is a question we fought back and forth on this committee on a number of occasions, and that relates to what kind of lobbying can be made exempt. Obviously, if we are contacted by people in our own districts, regardless of how many times, that should be exempt. Yet, the Constitution refers to us representing the State that we are from and not the district.

When we make that decision, do you think that the law should relate to contacts within our State or contacts within the congressional districts?

Mr. LANDAU. In the past we have not been pleased with the limitation of that exemption to the district because of many areas represented by several representatives, and it is mainly urban areas, and you walk around the corner, and it is a different congressional district, and we think that that is a problem that most representatives do represent much larger interests than just their own district.

So for that reason we would not oppose expanding the exemption for communication representatives to include representatives for the whole State.

Mr. MOORHEAD. You discuss in your statement the question of the Justice Department suggesting the civil investigative demand to aid civil enforcement. I guess this is a concern to all of us, as to the civil liberties implications that arise from this suggestion.

Couldn't the C.I.D. be misused and the civil liberties be violated of individuals?

Mr. LANDAU. We are very concerned with that problem; however, on the other hand, there is a civil liberties problem that I mentioned which is keeping people out of court, and I think it is really a balancing of interests there. I think that the changes that I suggested in the Justice Department proposal would sufficiently protect against abuse, particularly the deterrent aspect of having the Attorney General or the Assistant Attorney General rather than lower level officials approve it and the fact that each demand should be approved and the standards for approving them.

In other words, there has to be facts or circumstances which indicate there has been a violation of the act. You just can't use the civil demand to go on fishing expeditions.

Mr. MOORHEAD. Thank you very much.

Mr. DANIELSON. On the geographical exemption, we sort of coined the name for it, H.R. 81 has the county. For example, in Los Angeles County we have 16 districts, plus an overlapping district, two overlapping. So the two Members who would be in the overlapping districts would have the exemption from both counties. It is a matter of drawing lines, and we are trying to be reasonable when we are doing so.

Your testimony is very valuable to us, in that it states the other side of the question. We have such outstanding Members of Congress on both sides of the question that it is going to be like walking a tightrope.

But your contribution is very helpful. I didn't receive your statement until this morning as we began, so I have not read it, although I don't think it is dissimilar particularly from what you told us last year.

Mr. LANDAU. No.

Mr. DANIELSON. Thank you very much. There being no one else here, and I have no questions that you haven't answered as we have gone through, thank you.

[Witness excused.]

Mr. DANIELSON. The next witness will be from Common Cause, which will be represented by Mr. Michael Cole, director of legislative activities. Make yourself comfortable and proceed.

I might state, before you begin, Mr. Cole, I have just been handed two memoranda, one on the constitutionality of requiring disclosure of the identities of organizations which contribute to lobbying organizations, dated March 7, 1979, and the other, the constitutionality of requiring the disclosure of organization efforts to generate grassroots lobbying.

They are parts of your—or supplemental to your statement, I presume. You may proceed.

TESTIMONY OF MICHAEL COLE, DIRECTOR OF LEGISLATIVE ACTIVITIES, COMMON CAUSE

Mr. COLE. Thank you, Mr. Chairman and Congressman Moorhead.

I am pleased to have this opportunity to testify before the committee. I would like to request that my prepared statement be included in the record along with the two constitutional memoranda.

Mr. DANIELSON. Without objection, they will be included in the record.

[The complete statement follows:]

SUMMARY OF LOBBY DISCLOSURE TESTIMONY OF MICHAEL COLE, LEGISLATIVE DIRECTOR, COMMON CAUSE

I. THE NEED FOR LOBBY DISCLOSURE LEGISLATION

A. The public has a right to know how government decisions are influenced by the activities of organizations conducting significant lobbying efforts.

B. An effective lobby disclosure law can help protect the integrity of the legislative process.

C. The current federal lobby disclosure law has proven totally ineffective in providing the public, the press, and Members of Congress with a picture of the organized outside pressures exerted on the government decision-making process.

II. KEY INGREDIENTS OF A NEW LOBBY DISCLOSURE LAW

A. Coverage.—The current law's ambiguous principal purpose test should be replaced by a quantifiable, objective standard which even-handedly covers all groups that engage in significant lobbying.

B. Meaningful Reporting Requirements.—Basic information should be disclosed about an organization's issue interests, the paid professionals who lobby on its behalf, its expenditures related to lobbying, the nature of its efforts to generate grassroots lobbying and the identity of its major organizational contributors.

1. Stimulation of grassroots lobbying is the major growth area of organizational lobbying today. Failure to require disclosure of covered organization's efforts to generate grassroots lobbying would result in a highly misleading and incomplete picture of the overall lobbying efforts of many lobbying organizations.

2. Requiring registered lobbying organizations to disclose those other organizations from whom they have received large contributions serves the important purpose of enabling the public and Members of Congress to know who is behind major lobbying campaigns.

C. Enforcement and sanctions

1. An effective system of civil enforcement should be adopted; no criminal sanctions should be used.

2. Basic protections should be included for those against whom the law is being enforced. Use of informal internal methods of conference or conciliation is the preferable first step in enforcement. If civil investigative demands are used, safeguards against their abuse must be included.

TESTIMONY OF R. MICHAEL COLE, DIRECTOR OF LEGISLATIVE ACTIVITIES, COMMON CAUSE

Mr. Chairman, I am Michael Cole, Legislative Director for Common Cause and a registered lobbyist. I appreciate the opportunity to appear once again before this subcommittee to testify in support of new lobby disclosure legislation. As you know, Mr. Chairman, Common Cause has a longstanding interest in this subject and we look forward to working with you and the other members of this subcommittee to gain adoption of a fair, workable and even-handed lobby disclosure statute in this Congress. This subcommittee deserves praise for its thorough consideration of lobby reform proposals in the last Congress, as do you, Mr. Chairman, for your able leadership in gaining House passage of a strong bill last April. While we share your disappointment that the Senate failed to take similar action in the last Congress, we are extremely pleased that you have made this subject the first major item of subcommittee business this year.

In my testimony this morning I want to discuss both the need for lobby reform legislation and what we see as key ingredients in legislation to address that need.

We view this issue as one that must be treated with great care, as it involves disclosure of constitutionally protected activity. At the same time, we believe that the public has a right to know of the significant, organized outside pressures exerted on government decision-making and that a strong public interest in preserving the integrity of the decision-making process is served by bringing such lobbying activities more sharply into public view. We firmly believe that sound legislation providing the public with useful, basic information about significant lobbying activities can be drawn consistent with the free and robust exercise of First Amendment rights.

I. NEED FOR A NEW LOBBY DISCLOSURE LAW

The right of individuals and groups to petition their Government is a basic constitutional right—before legislating to provide public disclosure of organized lobbying activities, this subcommittee is properly asking that the case for lobby disclosure be made. To us, there are two basic reasons for such disclosure: to serve the public's right to know and to preserve the integrity of the governmental process.

A. The public's right to know

Citizens in a democracy have a right to know how their government works, and particularly how government decisions are influenced by the activities of organizations heavily engaged in the legislative process. At the federal level today, key aspects of the governmental decision-making process are generally open to public scrutiny. Hearings are open to the public. Bill drafting sessions are conducted in open session. Transcripts of committee and floor action are taken and made available to the public. Important information about the campaign finances and personal finances of Members of Congress are now being disclosed so that the public can better understand how the interests of outside groups, or a legislator's own self-interest, might be influencing government decisions.

But there is still one crucial area in which the public today remains unable to learn anything meaningful about how government decisions are being shaped, and that is the role played by organized outside interests.

Enactment of an effective lobby disclosure law is necessary to provide insights into the acknowledged influence of organized lobbying groups. As Chairman Danielson noted at last week's hearing, the power of lobbyists to shape decisions in state legislatures and in the Congress is so significant that collectively lobbyists are often referred to as the third House of the legislature.

The courts have recognized the validity of requiring public disclosure of lobbying activity. In holding that disclosure of basic information about lobbying activities did not violate first amendment rights, the Supreme Court in *U.S.* v. *Harriss* found that:

Present-day legislative complexities are such that individual Members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobby Act was designed to prevent. 347 U.S. 612, 625 (1954)

That decision thus found that the information about lobbyists' activities made available by a disclosure statute can enable lawmakers to make more knowledgeable decisions, since the information is key to their being able to sift out their constituents' interests from the barrage of special interests.

Not only does lobby disclosure provide public officials with needed information about the interests of those attempting to influence them, it also provides the electorate with a means of determining whose interests their public officials are representing, thus increasing the effective use of the franchise. As the Washington State Supreme Court recently stated in upholding the state ethics and lobbying law:

The electorate, we believe, has a right to know of the sources and magnitude of financial and persuasional influences upon government. The voting public should be able to evaluate the performance of their elected officials in terms of representation of the electors' interest in contradistinction to those interests represented by lobbyists. Public information and the disclosure . . . required of lobbyists and their employers may provide the electorate with a heretofore unavailable perspective regarding the role that money and special influence play in government decision making . . .

Fritz v. *Gorton*, 517 P.2d at 931 (1974).

B. Protection of the integrity of the legislative process

Beyond serving the public's right to know, a lobby disclosure statute can also help protect the integrity of the legislative process. We believe that an effective lobby disclosure law will have the salutary effect of helping to deter corruption that otherwise might occur through undue or unethical pressures being brought to bear on public officials. The gift disclosure provisions of H.R. 81 and other proposals before this committee are most pointedly aimed at meeting this objective. With public skepticism about government and the integrity of public officials continuing to run disturbingly high, this underlying purpose of lobby disclosure legislation is certainly important. The Supreme Court in *Buckley* v. *Valeo*, 424 U.S. 1, 67 (1976) deemed the deterrence of actual corruption and the avoidance of the appearance of corruption to be substantial governmental interests justifying the required disclosures of campaign finances under the Federal Election Campaign Act that was being challenged in that case.

C. The inadequacy of the existing Federal lobby disclosure law

If this subcommittee reaches the conclusion it reached in the past two Congresses—i.e., that lobby disclosure is needed and can be required constitutionally—the next question, of course, is whether the 1946 federal lobby disclosure law is adequate to meet the need. On this point there seems no disagreement. That Act has proven totally ineffective in providing Members of Congress, the public and the press with meaningful information about lobbyists' activities. The 1946 law has been distinguished only by the gross incompleteness of the information it provides and by its almost total unenforceability. Clearly it deserves to be replaced by a new law that would help illuminate the organized outside pressures being brought to bear on the legislative decision-making process.

That the 1946 law provides little in the way of useful information hardly needs to be restated. During the past two Congresses we have furnished this subcommittee with a number of examples of recent major lobbying campaigns about which next to nothing has been revealed under the existing disclosure law. These, of course, were only examples—many others could be cited.

Since last testifying before this subcommittee, Common Cause has released a study that illustrates the inadequacies of disclosure under the current lobby law. That study, entitled "The Power Persuaders," described the lobbying on President Carter's energy package during the first nine months of the last Congress. Since any effort to show the extent of undisclosed lobbying in the context of a wholly ineffective lobby disclosure law presents somewhat of a Catch-22 situation, the study tells more about what was not disclosed under existing law than about what lobbying actually occurred. The study does make clear that, although the energy package was perhaps the most intensely lobbied issue in the 95th Congress, very little of the activity was disclosed to the public.

I would like to set forth a few highlights of that study which underscore the glaring shortcomings of the current lobby law—and the need for a new lobby disclosure law providing more information. I would also ask permission that the full text of that study be included in the hearing record as an appendix to this testimony.

Our study of 376 energy related organizations with Washington representatives and 954 of the individual lobbyists those organizations employ showed that almost two-thirds of the energy lobbyists are still unregistered.

Moreover, only one in ten of the organizations themselves registered as lobbying groups with Congress or filed any financial data about their organizational lobbying campaigns.

Even those individuals and organizations which do register with Congress frequently report such small expenditures that their reports are close to meaningless. Our study found full-time lobbyists reporting quarterly expenditures of less than $10. Obviously, such reports hide more than they reveal about the true costs of lobbying.

The same low level of reported expenditures continues throughout the oil and gas industries. The entire oil industry reported spending $600,000 on lobbying during the first nine months of 1977. The gas industry reported spending $550,000 during the same period.

The largest industry trade associations, the American Petroleum Institute and the American Gas Association, with annual budgets of more than $30 million, report spending only $274,900 and $28,684, respectively, on lobbying during the first nine months of 1977. By contrast, Common Cause, with an annual budget of $5 million, reported spending more than a million dollars on lobbying during the same nine-month period.

That these expenditures do not fully reveal lobbying costs is made clear by comparison with the lobby disclosure reports filed under California's much tighter registration law. Three California gas utilities reported spending one and a half times as much on California lobbying in 1976 as the entire gas industry reports spending on the federal level in the first nine months of 1977 while the Carter energy package was before the Congress. Three oil companies reported spending about as much on lobbying California decision-makers in 1976 as the entire oil industry reported spending at the federal level during the first nine months of 1977.

In September of 1977, a number of utility companies launched a major solicitation campaign against the utility rate reform section of Carter's energy package. At least seventeen utilities, with a combined total of more than a million and a half shareholders, sent letters to each of their shareholders asking them to write to their Senators and Representatives. The Common Cause study calculates that these letters cost a minimum of $157,800; none of which was reported as a lobbying cost, since none of the utilities involved is registered as a lobbying group. Those of your colleagues who were deluged with the letters generated by these appeals did not know that they were hearing almost exclusively from shareholders and seldom from a cross-section of those affected by the utilities.

In August, 1977, Mobil Oil ran a full page advocacy advertisement in nearly every Congressional district. The ad included clip-out coupons to send to the Senators and Representatives in the area, registering the sender's opposition to the energy package President Carter proposed. Altogether, on this and other advertisements, Mobil Oil spent about $4 million on advocacy advertisements. Mobil is not registered as a lobby group, so none of these expenditures are reported to Congress. In fact, the only figures on Mobil lobby spending filed with Congress are the $796 reported spent by seven of the individual lobbyists working for Mobil during the first nine months of 1977 and their $24,975 in salaries for lobbying during that period.

Clearly, this does not give an accurate picture of Mobil's lobbying.

All these findings only reinforce our belief that Congress must move to enact new lobby disclosure legislation that would make available the kind of basic information about organized lobbying activities that so often remains hidden from public view under the current law.

As Representative Railsback noted in his testimony last week, the states have been active in the last several years in enacting new and generally effective lobby disclosure. Since 1972, 41 states have passed new lobby disclosure statutes. Those in Washington, California, and Massachusetts are among the most comprehensive, and in each of those states voters indicated their support for such disclosure by approving ballot measures calling for such legislation. We hope that with the early start made this year, the Congress will at last be able to complete its work on reforming the federal lobbying disclosure law.

II. KEY INGREDIENTS OF A NEW LAW

I would now like to focus our testimony on some of the key issues which this subcommittee will face as it drafts a new lobby disclosure law. As a general point, I want to stress that, while Common Cause believes very strongly that certain principles must be followed in drafting a new federal lobby law—e.g. registration and reporting by organizations, not individuals; use of an objective test for triggering registration under the Act; some disclosure of major contributors and efforts to stimulate grassroots lobbying, etc.—we are not wedded to any set formulation of these provisions. They can be drafted in a variety of ways that would meet the twin objectives of providing useful information and avoiding the imposition of undue burdens on reporting organizations.

During the last Congress and in discussions that have occurred since that time, a number of useful refinements of previous lobby disclosure proposals have been set forth. For example, the idea of deleting criminal penalties from this legislation now seems to have won broad acceptance. The concept of limiting disclosure of large contributors to those made by organizations deals effectively with concerns that have been raised about scaring off individuals from contributing to certain lobbying organizations. Thus, we believe that substantial progress has been and is being made in accommodating the need for disclosure of relevant information with the need to minimize the burdens on those who lobby.

A. Coverage

The determination of who is to be covered under any new federal lobby law is critical to its effectiveness. There is widespread agreement that use of the ambiguous "principal purpose test" has been a gaping loophole in the 1946 law. That type of test also leads to inequitable results. A small group that has a budget of only $50,000, but spends most of it for lobbying, is covered by the principal purpose test. But another organization (such as Mobil Oil or the Chamber of Commerce) may

spend literally millions of dollars to engage in sophisticated, organized lobbying efforts and escape the Act's coverage by claiming that lobbying is not their principal purpose.

Common Cause believes that the principal purpose test must be replaced by a quantifiable, objective standard which even-handedly covers all groups that engage in significant lobbying of Congress. We support a quantifiable threshold that measures time and money spent on lobbying in ways that are easily calculated.

We favor the type of threshold contained in H.R. 81 and H.R. 1979 which utilizes a days' test for in-house employees. This threshold, which the House approved last year, grew out of extensive discussion and debate in committee and among various outside interest groups and ultimately obtained rather broad acceptance as a fair and workable standard. To us, its appeal is the simplicity of keeping track of days lobbied. Similarly, we think that for determining whether a given organization has spent enough money to trigger coverage, the calculations should be kept as simple as possible. We therefore find merit in the suggestion made by Assistant Attorney General Wald in her testimony last week that only expenses incurred in employing or retaining lobbyists be considered in calculating whether a group has spent the requisite amount to trigger coverage.

We believe that, under any new law, only organizations, not individuals, should be required to register. In addition, only organizations that pay people to lobby for them—either employees or retainees—should have to register and file reports. Individuals, acting on their own behalf, who want to communicate with Members of Congress should be able to do so secure in the knowledge that nothing they do will subject them to disclosure or sanctions.

B. Meaningful reporting requirements

The key to an effective lobby disclosure law is its reporting requirements. While unnecessary administrative burdens can and ought to be avoided, it is important that Congress and the public be provided with sufficient information to make the reports meaningful. After numerous discussions with representatives from a variety of small organizations, we believe that certain changes can and should be made in the reporting requirements. But we also believe that some of the fears regarding the so-called "onerous" reporting requirements of a new law are unfounded and often based on misunderstandings of what the proposed legislation would require or are being voiced by some who regard any disclosure as too burdensome.

We believe that reports should disclose basic information about an organization's issue interests, the paid professionals who lobby on its behalf (including those retained to lobby), its expenditures related to lobbying, its major organizational contributors, and the nature of its efforts to generate lobbying by its members, employees, stockholders, or others. These reporting requirements are found in H.R. 1979. Most of this information is readily available to organizations in the normal course of business.

Provisions can be added to simplify the reporting of lobbying expenses. For example, overhead costs, such as office rent and utilities, can and should be explicitly excluded. Allowing good faith estimates and not requiring attribution of costs which cannot be determined with "reasonable preciseness and ease" can substantially alleviate many problems that otherwise might arise in calculating expenses. The concept suggested by Assistant Attorney General Wald that expenditures for the preparation, printing and distribution of lobbying communications be reported only to the extent that the costs exceed a certain amount (e.g. $5,000) also deserves consideration.

Undoubtedly, the two most controversial provisions this committee will consider are those which would require reporting of significant grassroots solicitation efforts and disclosure of major organizational contributors. We believe both are integral to an effective lobbying bill and that both can be drafted so as to meet constitutional requirements. I would like to submit for the hearing record legal memoranda recently prepared by Common Cause General Counsel Kenneth Guido and Staff Attorney Ellen Block concerning the constitutionality of both provisions.

Grassroots lobbying.—Efforts to solicit grassroots lobbying unquestionably constitute the major growth area of organizational lobbying today and information about efforts to generate such lobbying should be included in the reports of lobbying activities filed by organizations. Such diverse organizations as the National Rifle Association, Common Cause, the Chamber of Commerce, the Right to Work Committee and the AFL-CIO spend substantial amounts of money—and large proportions of their lobbying budgets—on stimulating lobbying by members of the organization or the public at large. During the last year more and more organizations have recognized the validity of the observation made by U.S. Chamber of Commerce President Richard Lesher that "lobbying that counts is done through the grass roots process."

Our study, The Power Persuaders, showed that many groups spent substantial sums to lobby on the energy package through paid advertisements in newspapers and magazines. Some of these ads were full-page discussions of pending legislation, complete with a coupon for readers to send their representatives urging a particular position on the legislation. Between January 1 and May 31, 1977, industry and trade groups placed energy advocacy ads costing $1,131,588 in just four major newspapers.

In the last Congress the National Right to Work Committee conducted a very visible advertising campaign urging citizens to help defeat the labor law reform bill, S. 1883. Similar campaigns were waged in the last Congress by the Calorie Control Council (concerning the saccharin ban), the U.S. Maritime Committee (concerning cargo preference), Mobile Oil (concerning the energy legislation), and many others.

The stimulation of grassroots lobbying is, of course, done through a variety of other means in addition to advertising. Membership action mailings, pleas to shareholders or customers, and selectively targeted computerized mailings are being utilized increasingly. For some organizations, such as the National Rifle Association, solicited lobbying is the principal way in which lobbying pressure is exerted and the solicitation efforts constitute the bulk of the organizations' lobbying expenditures. In our view, these efforts must be publicly reported in order to have an effective disclosure law. To fail to reflect such lobbying activity in a lobby disclosure bill would result in a highly misleading and grossly incomplete picture of the overall lobbying efforts of many lobbying organizations.

It is important to note that under the approach taken in Section 6(b)(7) of H.R. 1979 only the organization seeking to generate grassroots lobbying would report on such activity. No individual recipient of a solicitation would be required to report. Nor would any organization be required to disclose the names of those recipients. Finally, and perhaps most importantly, reporting of efforts to stimulate lobbying would only be required of organizations that are covered due to the lobbying activity of their paid lobbyists; the efforts to stimulate grassroots activity would not themselves ever trigger coverage.

While we find the approach taken in H.R. 1979 to be a reasonable one, we do not view it as the only way to frame a solicitation disclosure provision. For example, the Administration's suggestion that solicitations not be reported unless they involve the expenditure of a certain level of funds during the reporting period is a useful notion. If this approach is taken, we would suggest that information about solicitation efforts—e.g. disclosing the issues on which grassroots efforts have been initiated and their cost—be triggered if more than $25,000 is expended during the calendar quarter.

Disclosure of major organizational contributors.— It is critical to the purposes of a lobby disclosure law that the public and Members of Congress be able to know the identity of those providing significant contributions to a lobbying organization and the amount they have given (at least in categories of amount). Even the current generally ineffective federal lobby law recognizes the importance of this information by requiring disclosure of all contributors of $500 or more to a registered lobbying group. We support the provision passed by the House last year and included in H.R. 1979, which requires a registered lobbying organization to disclose its major organizational (as opposed to individual) contributors, i.e. those giving it $3,000 or more a year.

The Supreme Court, in *United States* v. *Harriss* upheld the much more stringent contributor disclosure requirement found in the 1946 law, saying that Congress has the right to know "who is putting up the money and how much." As discussed in the legal memorandum we have furnished the subcommittee, we believe the contributor disclosure provision in H.R. 1979 is constitutional and would serve the important purpose of enabling the public to know who is behind major lobbying campaigns.

The focus on organizational rather than individual contributors is consistent with the whole thrust of current lobby disclosure proposals which are aimed at shedding light on the lobbying activities of organizations rather than individuals. One major way in which many organizations lobby is through other organizations—trade organizations, coalitions or other entities. Many groups active in lobbying today have names that obscure their purpose and give no real clue as to who they represent. Disclosure of major organizational contributors addresses that problem.

In the last Congress, we mentioned the example of the Calorie Control Council which engaged in major lobbying efforts against the proposed saccharin ban. To many, their name conjured up images of a group of activist weight watchers; the lobbying reports they filed under the current lobby law made clear that in fact the Council drew its principal financial support from Coca-Cola, Pepsico, Dr. Pepper, 7-Up, Nestle and other organizations with a major economic stake in the issue on which it was lobbying.

This is by no means an isolated example. Lobbying groups with names that obscure their backing abound today. The American Industrial Health Council, which lobbies to effect carcinogen standards, receives large contributions from du Pont, Gulf Oil, Dow Chemical and other manufacturers with an economic stake in government decisions on such decisions.

A group called Citizens for Government Fairness spent over $368,000 in 1978 on lobbying. Its name reveals nothing about who the group represents. In fact, Citizens for Government Fairness is supported by landowners and businesses located in the Imperial Valley of California who want the law changed so that farms in that area could have access to more federal irrigation water.

If new legislation fails to include a requirement that major organizational contributors be disclosed, not only will it represent a significant retreat from disclosure required under the current lobby law, but it is likely to lead many more organizations to lobby through nebulously named front groups that make it difficult if not impossible for Members of Congress and the public to know who they really represent.

C. Enforcement and sanctions

To insure that a new lobby disclosure law produces information which provides the public with an accurate picture of organized lobbying, it is essential that covered organizations comply with the law's requirements. Therefore, a workable system of administering and enforcing the law must be established. The scheme set forth in H.R. 81 divides responsibilities for administering and enforcing the law between the General Accounting Office and the Justice Department.

We recognize that these two agencies differ on the proper division of responsibilities between them. As this subcommittee seeks to resolve the differences between the approaches advocated by the two agencies, we urge that the administering agency—presumably GAO—be granted sufficient oversight and compliance authority so that it is not placed in the kind of position which has hamstrung the Clerk of the House and Secretary of the Senate in administering the current law.

Following meetings with Justice Department officials as well as a number of outside groups who have expressed grave fears about utilization of criminal sanctions in enforcing a lobby disclosure law, we have been persuaded that criminal penalties should be dropped from the proposed legislation and that a system of civil enforcement can be effectively utilized.

Within a system of civil enforcement, we advocate inclusion of certain basic protections for those against whom the law is being enforced. Since many violations of the law are likely to be technical violations growing out of inadvertance or misunderstanding, we favor the approach followed in H.R. 81 and H.R. 1979 of using informal methods of conference or conciliation before the bringing of a civil action. If this subcommittee shares reservations about this approach expressed by the Justice Department, we would urge that it be retained at least in the first instance in which the Justice Department seeks to enforce the law against a given organization and thereafter the type of notice provision suggested by the Justice Department could be followed.

It seems essential to effective compliance that in certain instances the enforcing agency be able to gather documentary evidence short of using normal discovery which becomes available only after a civil suit has been filed. The Justice Department has proposed using civil investigative demands to obtain such pre-litigative discovery.

If the subcommittee chooses to authorize the use of CID's for this purpose, we strongly urge inclusion in the legislation of the four key safeguards suggested by the Justice Department: 1) that CID's be issued only after the Justice Department learns of facts or circumstances that reasonably indicate a person may have violated the Act; 2) that CID's be issued only with the written approval of the Attorney General, Deputy Attorney General or an Assistant Attorney (we would not drop down to the level of Deputy Assistant Attorney General, as proposed by the Administration); 3) that CID's be used only to obtain documentary material; and 4) that CID's be subject to pre-enforcement judicial review.

III. CONCLUSION

Organized lobbying has become an enormous factor in influencing public policy decisions. We believe that enactment of a carefully drawn new lobby disclosure law will provide the general public, the media, competing interests, Members of Congress and the Executive Branch with the opportunity to understand the nature of the pressures being brought to bear on government officials and to learn how they are being exerted.

We are very encouraged by this subcommittee's early start in taking up lobbying disclosure legislation. We look forward to working with the subcommittee in the

weeks ahead and we hope that a workable, fair, and effective new lobby law can be enacted within the next few months.

Mr. COLE. I will try to paraphrase my statement. As this subcommittee begins to address the admittedly very ticklish question of drafting an effective, fair and evenhanded lobby disclosure law, I want to praise the subcommittee for the outstanding job it did in the last Congress in grappling with this issue.

Its consideration of the issue was painstaking and thorough, and we commend you, Mr. Chairman, and the subcommittee for your work. We look forward to working with you in this Congress to produce a bill that will meet what I think are the twin objectives of this legislation: To provide the public with some meaningful information about lobbying groups which are exerting pressure on the legislative process, and to avoid imposing undue burdens on those who must comply with the act.

We think that legislation can be drawn that can meet these two aims, and in my testimony this morning I will try to describe not only the need for the legislation but also some of the key ingredients that we feel must be contained in it.

We are talking about providing reasonable disclosure. I don't think any of the witnesses are talking about full disclosure. Nobody is seeking to know everything about every lobbying organization, but we think a law can be drawn and should be drawn that would provide the public and Members of Congress and the press with a better idea of the variety of pressures being exerted today on the public process.

As we look at the need for this legislation, we begin with the belief that compelling governmental interests are served by providing public disclosure of lobbying activities. The previous witness framed the need solely in terms of dealing with corruption or abuses. While I think this legislation helps to address those needs, we see the legislation as addressing other needs than simply drying up corruption, or counteracting abuses.

We think lobby disclosure legislation can very effectively serve the public's right to better understand how the Government is working. In recent years the Congress has legislated in many areas to enable the public to better understand how the governmental process is working. Today the legislative process in almost all its aspects is very much open to public view.

We have open committee meetings, open bill-drafting sessions, verbatim transcripts are taken at hearings, and the Congressional Record provides people around the country with a very full idea of what occurs on the floor of the Congress.

But the one area that is excluded from any comprehensive view by the public is the area of how lobbyists collectively are influencing the legislative process.

Mr. Chairman, last week during the hearings I know you referred to the lobbyists in the State of California as being referred to as the third house of the legislature. Today lobbyists collectively have a widely acknowledged major influence on how Government decisions are made. This influence is growing daily if judged by most accounts of how many lobbies there currently are. It is almost impossible, however, to give any precise figures because the current law reflects only a fraction of the lobbying activity going on today and those engaged in lobbying today.

The courts have recognized the validity of requiring a public disclosure of lobbying and have discussed the need. They have described the need in three major ways. The first is the right of public officials, Members of the Congress specifically, to know and to evaluate the pressures being brought to bear on them.

In the *Harriss* decision, the major Supreme Court decision considering the 1946 Federal Regulation of Lobbying Act, the Court spoke of the myriad of pressures being brought to bear on Congress and pointed out that full realization of the American ideal of Government by elected representatives depends to no small extent on their ability to properly evaluate such pressures.

The Court spoke of this—the importance of enabling Members of the Congress to be able to evaluate these pressures—as the objective which the lobbying act was designed to meet.

Second, we also think that the electorate, the voting public, deserves to have this information available to them. We think that having it enhances their effective use of the right to vote and to franchise. In the Washington State Supreme Court case of *Fritz* v. *Gorton,* which has been upheld, the Supreme Court of Washington found that, and I quote: "The electorate, we believe, has a right to know of the sources and magnitude of financial and persuasional influences upon government. The voting public should be able to evaluate the performance of their elected officials in terms of representation of the electors' interest in contradistinction to those interests represented by lobbyists."

That is the second important reason the courts have found for lobbying disclosure legislation.

Mr. DANIELSON. Gentlemen and ladies, there are seats here in the room, please just move in and take them. There is no need standing when you can sit down. Go ahead.

Mr. COLE. A third major reason to have a lobbying disclosure law is to serve the governmental interest in protecting the integrity of the legislative process. Obviously, the gift disclosure provisions which are contained in H.R. 81 and the other pending legislation serves this purpose most pointedly, but we feel the overall thrust of the legislation in providing the public with meaningful information about what lobbyists are doing serves this objective.

The whole proposal is meant to counteract public skepticism about Government, to deal effectively with the public's current lack of confidence in Government, its concern about how Government is functioning and how interest groups are manipulating the process.

In the Supreme Court decision of *Buckley* v. *Valeo* value was found in deterring actual corruption and avoiding the appearance of corruption. That value was found to be a substantial Government interest justifying the disclosure of campaign finances in that case.

If the subcommittee reaches the conclusion it has in the two prior Congresses—that there is a need for some kind of lobby disclosure information—the next question it has to answer is whether the current law, the 1946 act, is doing the trick?

Our feeling is that there is little disagreement about the fact that the 1946 act is gravely deficient. That act is distinguished only by the gross incompleteness of the information it provides and by

its almost total unenforceability. The 1946 act does not provide the public with very much useful information.

During the two prior Congresses we have provided the committee with a number of examples of heavy lobbying campaigns that are almost totally unreflected in reports filed under that act. I will not put them in the record again. They can be found in your prior committee hearing records. Obviously, these are only examples. Many others could be cited. There is still somewhat of a Catch 22 in this whole effort to find data available under the current ineffective lobbying law to indicate the kind of heavy lobbying needed to demonstrate the need for a better law.

Although it is often very difficult to show with precision the magnitude of lobbying efforts going on today, I do want to refer to one study that we attempted during the last Congress. It was a study of what we considered to be the issue which received the most intense lobbying focus during the last Congress, and that was the energy legislation.

We took a look at the reports filed during the first three calendar quarters of 1977, after the Carter energy package was presented to the Congress. And in that study entitled, "The Power Persuaders," we tried to analyze the degree to which lobbying was accurately reflected under the current law, because by everybody's admission there was intense lobbying going on.

As might be expected, our study was perhaps more significant in what it was unable to find because of the lack of information than it was in terms of being able to portray precisely the activity going on in the Congress.

I would like to mention a few highlights of the study and put the entire study in the record.

Mr. DANIELSON. Would you do this, Mr. Cole? Do you have a copy of it?

Mr. COLE. Yes, I do, and I would like to place it in the record.

Mr. DANIELSON. Would you first lodge it with us, and then if it doesn't look like we are publishing Sears, Roebuck catalog, we will put it in the record. I am trying to save the taxpayers' money.

Mr. COLE. Fine. And at the very least there is a summary section at the front that might be included.

Mr. DANIELSON. I appreciate having it, and I am not saying it will not be in the record. I'd just like to receive it as being lodged for the time being.

Mr. COLE. That is perfectly acceptable. We appreciate that.

Our study looked at 376 energy related organizations that we were able to discover by looking at a variety of indices of organizations that are involved in lobbying here in Washington on energy matters. We looked at 954 individual lobbyists for those organizations, but discovered that almost two-thirds of the individual lobbyists were unregistered.

We discovered only one in ten of the organizations themselves was registered. In many instances full-time lobbyists reported quarterly expenditures of less than $10. The same low level of reported expenditures is found throughout the oil and gas industries. Clearly they were major actors in this whole effort, but nonetheless the largest industry trade associations, the American Petroleum Institute and American Gas Association, with annual budgets of more

than $30 million, reported spending $274,900 and $28,964 respectively in the first 9 months of the year. These figures, we feel, are misleadingly low.

One way we have arrived at that conclusion is by looking at the filings made by some of the same organizations under the California lobby disclosure law, which is a much tighter reporting and registration law.

Mr. DANIELSON. Does your document have these comparisons?

Mr. COLE. Yes, I will give one example and move on. For example, three California gas utilities reported spending one and a half times as much on California lobbying as the entire gas industry reported spending on the Federal level in the first 9 months of 1977, when the Carter energy package was before the Congress.

Mr. DANIELSON. You may give more than one example. My question was not to cut you off. It was to insure that we have the information.

Mr. COLE. Let me give you at least one other comparison with California. Three oil companies reported spending about as much on California lobbying of decisionmakers in 1976, as the entire oil industry reported spending under the 1946 act at the Federal level during the first 9 months of 1977.

Our testimony also refers to the ad campaigns that were run, for example, by Mobil Oil concerning the energy legislation. By Mobil's own figures they spent about $4 million during that year on advocacy advertisements including ads that had a coupon to send to your Senators and Representatives urging them to oppose lobby disclosure legislation.

Yet you find Mobil Oil Corporation not a registered lobbyist under the act, and you find the seven individuals registered as lobbyists for Mobil reported spending a grand total of $796 during this first 9 months of 1977. Their salaries were reported as a total of $24,975.

I give these examples only as examples, again to show that we feel that the current law is really a dead letter. It does not meet the purpose of providing the public with an overview of who is really influencing the legislative process today.

As Representative Railsback mentioned in his testimony last week, the States have been very active in this area. Forty-one States have written new lobby laws since 1972, 22 of these in 1977 and 1978 alone. In Washington, California and Massachusetts, the States where the voters have voted to enact new lobby disclosure legislation, the legislation is among the most comprehensive in the country.

I would like to turn briefly to focus on what we see as some of the key elements in an effective lobby disclosure law. I want to emphasize that we are wedded to any precise formulation on any of these details, but we feel that certain principles should be followed, such as that which the committee has followed in saying that only organizations should file and not individuals.

We think there are a number of other key principles that should be followed in writing a reasonable lobby disclosure law, one that would bring about adequate disclosure of those who fall within the law's coverage.

There is widespread agreement that the ambiguous principal purpose test in the 1946 act has proven totally ineffective in providing the public with a view of who really is important on the lobbying scene today.

It also is inequitable. An organizatien spending $50,000 a year with almost all of it devoted to lobbying meets the principal purpose test and has to register. Another organization spending literally millions of dollars on lobbying, but for whom that is only an incidental purpose does not file under the current law. We think that kind of a test—as opposed to a more objective, quantifiable test—is inappropriate.

We find the test used in both H.R. 81 and H.R. 1979—based on the activity of in-house employees—to be a reasonable one. We think its best feature is its simplicity. It's easy for someone to keep track of whether they lobbied on a given day rather than having to keep time records or other types of detailed reports. We think this has great merit.

Similarly, we find merit in the concept set forth by the Justice Department in its testimony last week that only certain expenses, such as salaries and retainer fees be kept track of for trigger purposes.

I would also include as the GAO suggested, the expenses incurred for gifts or entertainment for purposes of ascertaining whether an organization has passed the threshold.

Once an organization is covered under the act, obviously the next question is what do they report? Since the Congress adjourned last year, we have engaged in conversations with a number of other organizations and the Justice Department, trying to see how changes might be made in the reporting requirements to meet legitimate concerns raised by smaller organizations and others seeking to avoid burdensome disclosure.

Some, I think, still feel that any disclosure is burdensome. We do feel, however, that very serious and legitimate concerns have been raised, and we think they can be dealt with while still providing relevant information or lobbying activities.

We feel the report should disclose basic information about the registered organization's issue interests, the paid professionals lobbying on its behalf, including those retained to lobby, its expenditures relating to lobbying, the gifts it makes, its major contributors and the nature of its efforts to generate grassroots lobbying through its members or employees or stockholders.

I would like to go through, briefly, several of those items. In terms of lobbying expenses, I agree with other witnesses who urged that overhead costs, such as office rent or utilities, be explicitly excluded in this legislation. We have no problem with allowing good faith estimates and including language, such as that which was in the bill last year and is now in H.R. 81, to focus on those expenses that can be determined with reasonable preciseness and ease. I think makes sense and can ease the problems in calculating expenditures.

I also think the committee should give serious consideration to the suggestion made by Assistant Attorney General Wald last week that some threshold figure such as $5,000 be used before any breakout is required for expenses incurred for preparation, printing,

and distribution of lobbying communications. If an organization sends 200 letters to the Hill, it should not have to be reported.

We want to ease the difficulty that otherwise might be involved in calculating expenditures.

The two most controversial reporting provisions are clearly the grassroots solicitation provision and the provisions requiring disclosure of major organizational contributors. We believe that these do need to be drawn with great care, but we believe that they can be drawn constitutionally and that they serve a highly important purpose in the kind of legislation the committee is seeking to draw. As the chairman noted, I submitted for the record legal memorandums outlining our reasons for viewing these as perfectly constitutional exercises of Congress' power.

First, I would like to speak briefly about the grassroots solicitation issue. To begin with, I think some witnesses in the past have miscast this issue. This does not involve disclosure of what individuals are doing at the grassroots level or any regulation of what they can do. What H.R. 1979, the Railsback-Kastenmeier bill would do—and that's the bill that passed the House last year—is require the organization seeking to generate major grassroots lobbying efforts to note the issues it worked on and break out the expenditures.

Everybody's doing this type of activity today. Common Cause does it, as to the National Rifle Association, the Chamber of Commerce, the AFL-CIO and many others.

I recently had our treasurer calculate what our expenditures were in the last Congress for grassroots efforts. He calculated that our lobbying expenditures on grassroots activity constituted slightly over 70 percent of the total lobbying expenditures we reported during the last year. That's not unusual. More and more groups, I think, are recognizing this as an effective way to lobby. And again, what we're seeking is that what an organization does to generate that type of lobbying, be noted on its reports. This would involve no limitation on the organization's lobbying at the grassroots level. There would be no requirement that the names of those solicited be listed and no indication needed as to whether they, in fact, did write.

We don't consider the approach taken in H.R. 1979 as the only way to frame a solicitation disclosure requirement. In fact, we found very useful the suggestion made by the administration last week that instead of using the litany that's been used in recent bills—covering those solicitations going to 500 or more individuals, 100 or more employees, etc.—that perhaps $1 trigger for disclosing these solicitation campaigns be used instead. We would suggest that if this approach were to be tried, something like spending $25,000 in a calendar quarter on solicitations be the figure for triggering disclosure or such campaigns.

I'd now like to discuss disclosure of organization contributors. We think it's absolutely essential for a lobby law to provide the public and Members of Congress with some ability to know the identity of those behind lobbying organizations.

Even the current, generally ineffective 1946 lobbying law requires contributor disclosure of any organization or individual contributing over $500 to a registered lobbying organization. The bill

adopted by the House last year included a contributor disclosure provision. It was adopted as a floor amendment by a strong margin. The Supreme Court in the *Harriss* case found that when it comes to organized lobbying efforts the Congress has the right to know who's putting up the money and how much.

Our legal memorandum goes into more detail about why we feel it is constitutional to require some contributor disclosure, but I think it is important to realize, in drafting legislation to show how organizations lobby, that one way organizations lobby is by putting up money for other organizations to lobby for them. Some of them have very nebulous names. They may be front groups or trade associations, whatever, but we think that to track how organizational pressures are being brought to bear on the Congress today, it is important that registered organizations indicate those other organizations which give them major financial contributions. In H.R. 1979, "major" means over $3,000 the disclosure would be made in categories of amount.

We think that without that kind of contributor disclosure being required, you would be inviting more and more nebulously named front groups to be set up.

I cited a few examples in my testimony of organizations about when the public and Members of Congress would be really in the dark as to who they represented if there were no contributor disclosure.

I referred to the Calorie Control Council, which many thought was some type of weight watchers organization, but really is a group of soft drink manufacturers working against the saccharin ban. In your State of California, Mr. Chairman, last year on one of the major ballot measures subject to the California lobbying laws requirement, a group called Californians for Common Sense, lobbied against the measure which was to impose restrictions on smoking. As it turned out through the California law, the public was able to discover that it was the Tobacco Institute and five to seven major tobacco companies who were behind that effort. Certainly hearing of a group called Californians for Common Sense did not give the public an idea of who was behind the major lobbying campaign that was conducted in California.

We feel that if the new legislation doesn't include the requirement that major organizational contributors be disclosed, it won't only represent a retreat from the current law, but it will lead to more and more efforts to come up with names that mask the real backing of the lobbying organization.

I would like to speak briefly about enforcement and sanction. Our feeling is that a law is only going to be as good as its enforcement and the ability to obtain compliance. We think that disclosure is important. But, if there is no harmony between agencies with responsibility for administering and enforcing these laws, the effectiveness of the law can be significantly undercut.

We recognize that, as the committee heard this morning, there are differences in approach between the Justice Department and GAO. I think that, however, the committee chooses to resolve these differences, it is important that the administrating agency, I presume it will be the GAO, be granted sufficient powers to effectively oversee the law, and to have some compliance authority. I think

the ability to go back to organizations that do not fill in a blank or inadvertently do not complete it and alert them to that fact is certainly something that should be given to the administering agency.

When you get into questions about trying to obtain compliance, it becomes more of a gray area, it is not as clearcut whether the conciliation efforts which we think should be the first step taken to obtain compliance, should be carried out by the GAO or Justice Department. Certainly when a civil action is brought against the violator, we think that is properly within the domain of the Justice Department. We have been persuaded that criminal penalties should be dropped from this legislation after talking to representatives of the Justice Department and many organizations which expressed a grave concern about the use of criminal penalties.

We think that a system of civil enforcement can be effectively used and should be employed in this type of legislation.

Mr. DANIELSON. May I interject a question, or a comment? The recommendations are as you described them, to leave out criminal penalties. I think, however, that the record should reflect the fact that we still have in our laws a section 1001 of title 18, which makes it a felony, knowingly and willfully to make a false statement of material fact of any matter within the jurisdiction of the U.S. Government or its agencies. And although specific criminal penalties are, or could be, eliminated in this bill for this bill alone, it is my opinion that that would not remove them from the reach of section 1001.

Mr. COLE. I know that a number of witnesses in the last Congress and the members of this committee share that view. What we are talking about is that no new criminal sanctions be created specifically for this legislation.

Mr. DANIELSON. You made your statement very clearly. I just want the record to, at about the same point in the record to reflect my comment.

Mr. COLE. Our emphasis in this is to try to provide some protection for those against when the law is being enforced within the system of civil enforcement. We feel the first step should be use of informal methods of conference or conciliation. I think in the period just after this type of law takes effect, there will be a number of groups which inadvertently or through misunderstanding fail to comply with its terms.

To have the ability to confer and try to conciliate is an important first step. The Justice Department expressed some reservations, but we feel that the first time an organization is found to be in some technical or minor violation of the Act, there should be an effort at conference and conciliation. If time and again such violations occur, then perhaps the type of notice approach that the Justice Department described could be used. But at least when an organization first is having problems with the act, I think an effort at conference and conciliation makes sense.

As to the idea of using civil investigative demands which was outlined in the Justice Department testimony last week, we think that the crucial thing there is how they are to be used. The subcommittee will make that decision as it drafts this bill. We urge

that the type of strong protections outlined by the Justice Department be included.

A signoff by a high Justice Department official—either the Attorney General, the Deputy Attorney General, or an assistant attorney general—should be needed. It should be required that CID's be issued only if the facts and circumstances lead to a reasonable indication that a person's violated the act, and CID's should be used only to obtain documentary evidence. Also, the CID be subject to preenforcement judicial review. If they're used, CID's should include such safeguards.

In conclusion, Mr. Chairman, I appreciate having this opportunity to lay out in some detail Common Cause's views on this matter. As I said on the outset, this is an issue where there are competing values. We are talking about balancing the first-amendment right to petition the Congress for redress of grievances, with the need to provide citizens with basic information that will enhance their right to know how their Government is working and will help protect against corruption and preserve the integrity of the legislative process.

We think the public and Members of Congress have the right to know this information and we look forward to working with members of this subcommittee to draft legislation that can strike the appropriate balance to provide useful information without unduly burdening those who have to comply with the law. I thank you again for the opportunity to appear here today.

Mr. DANIELSON. Thank you very much. And you made your point very well, and you have given us a lot of useful suggestions.

I will yield to my colleague, Mr. Moorhead.

Mr. MOORHEAD. I had another question I was going to ask first, but this point of having to report contributors really bothers me and it bothers me a whole lot. I know there are certain church organizations, like the Seventh-Day Adventists who worship on Saturday, and they don't like Sunday closing laws. And they would hurt the organization. They have very strong legislative concerns.

They have, as an article of faith that they cannot belong to organizations like labor unions and so they need a conscience clause; and that also requires them to do considerable lobbying. They also tithe, so that virtually any of them that makes any kind of substantial income whatsoever would pass your $3,000 level in a hurry. Those people aren't giving money purposely for lobbying, as are people that contribute to the ACLU or Common Cause or the Sierra Club or National Rifle Association or whatever it might be. But they're going to be on a list of having contributed so many dollars.

I think it throws a horrible wet blanket on—I may contribute to the United Presbyterian Church more than that amount of money, and I don't agree with many of their lobbying efforts, may absolutely disagree with it, but I believe in the church. I am really concerned about it, when we start doing something like that.

Mr. COLE. We share your concerns, Congressman, that individuals not be chilled in contributing to organizations they believe in. As a constitutional matter, we believe that disclosure can be equally required of individuals and organizations. The proposal that I spoke approvingly of—the Railsback amendment adopted by the

House on the floor last year and now part of the bill that Congressman Railsback introduced—deals with your concern in two ways.

First of all, it focuses only on those contributions to registered lobbying organizations made by other organizations, not by individuals. As a policy matter, it was felt that some individuals could be deterred from giving to an unpopular cause if filed with disclosure. Therefore, as a matter of policy, disclosure of individual contributors was dropped out of this bill. This is true whether the contribution goes to a church, or if we're talking about a lumberman who would not want to give to the Sierra Club if it were to be made known.

Second, in terms of the church example, the bill provides that only those organizations that devote 1 percent of their budget to lobbying have to provide any information about their contributors. Since churches do not normally devote anywhere near 1 percent of their budget to lobbying, they wouldn't have to make any contributor disclosure. The same applies to universities where some concern has been raised that those giving to universities not be disclosed.

The most direct answer to your question is no individual's name will ever appear as proposed under H.R. 1979 which we support.

Mr. MOORHEAD. Even if you limit it to organizations, you may—some organizations contribute money to groups of this kind that they don't, as members, necessarily agree with, but they may feel that a point of view needs to be expressed, or they believe in diversity of opinion, the opportunity to be heard. And there has to be a chilling effect on that. There just——

Mr. COLE. Again, we are only talking about major contributions, those over $3,000. But we believe that there is a valid public purpose served by allowing the public and Members of Congress to know the identity of these organizations who lobby them.

What do they know about an organization when they hear a title that connotes nothing? Is it really a front group for some other organization? That is why we feel that when you're drawing a bill dealing with how organizations lobby, that one way they lobby is by giving large contributions to another organization, and when that's the case, it should be disclosed.

We are not asking that every $15-a-year member to an organization, whether it is Common Cause or the National Rifle Association or anybody else, be disclosed. But we think that when there are large contributions, that those tell you something about what that organization represents. And that's why we feel that it is valid.

Mr. MOORHEAD. In looking over your statement on the constitutionality of contributor disclosure, I see that you didn't even mention the *First National Bank of Boston* v. *Bellotti* case last year, where the Supreme Court decided that the first-amendment rights applied to organizations as well as to individuals.

At least I think it should have been discussed and analyzed because it is a major case.

Mr. COLE. I would be happy to furnish you a subsequent memo to address that. The reason that perhaps the memo didn't address it initially is that we believe it is constitutionally permissible to require disclosure by either individuals or organizations. But it is as a policy matter that the bill focuses only on organizational contributors. We feel it is more in tune with the purposes of this

act—which is concerned with how organizations lobby—to focus contributor disclosure on organizations giving to other lobbying organizations. That's how Representative Railsback drafted his floor amendment in the last Congress.

Mr. MOORHEAD. Are there any organizations simply because of their very functions that ought to be excluded from coverage of this legislation? Such as: States, local units of government, churches, colleges, universities? Are there any organizations which should be excluded?

Mr. COLE. Other than the exclusions already included in the bill, such as Indian tribes, I think not. Our view of the legislation has been that its most important value would be to get beyond what exists under the 1946 act where you only see a partial view of who's influencing the legislative process. Our feeling has been that there should be no preferred position for a so-called public interest group or church group or university. All those who meet a common, objective standard by engaging in a certain level of lobbying should be deemed part of the lobbying process. If they pass that type of a threshold, they should file the same reports as other groups.

Mr. MOORHEAD. Are there any groups that have been formed basically for lobbying purposes that should be automatically included, even though they don't reach the dollar level? It is obvious that they totally——

Mr. COLE. I think not. I would hesitate to say any group merely by its nature must file under this act. I would think that any major lobbying group in the country today would be covered by the type of trigger contained in H.R. 81 or H.R. 1979.

Mr. MOORHEAD. In H.R. 81, there are two thresholds for an organization to pass. Under one, any organization which makes an expenditure of $2,500 and in any quarterly filing period retains an individual or organization to make lobbying communication crosses the threshold. The other is any organization which employs at least one individual who on any part of each 13 days or more in any quarterly filing period, or at least two individuals or any part of 7 days or more, in any quarter filing period, make lobbying communication on behalf of that organization and which makes an expenditures in excess of $2,500, also would cross the threshold.

It would seem to me it—that it would be much easier for an organization to reach the threshold if they utilized retained lobbyists than if they went through their own employees. And wouldn't there be a tendency to have them go the separate route so that they would perhaps not hit that qualifying level. Should basically the same requirement be present?

Mr. COLE. I don't think the decision of whether to retain an outside lobbyist is going to be made on the basis of whether or not that will be more likely to trigger coverage. I would think a group serious about undertaking lobbying will probably meet the threshold under either one.

The reason the threshold is differentiated in that way, if I understand the subcommittee's rational in the last Congress, is that if an organization retains someone specifically to engage in lobbying communications or to prepare or draft such lobbying communica-

tions, you hardly need to get beyond that, as long as a certain amount has been paid.

On the other hand, when you are talking about paid employees, lobbying may be only a part of their job. Thus, I think it's appropriate that in addition to the money paid to employees, there should be some indication that they are regular lobbyists for their organization. That's how the two approaches differ. I think it is proper.

Mr. MOORHEAD. As you know, I have supported this legislation basically, but people in this country are so sick of the redtape and the regulations, and the rules and reporting on everything that they're doing on every level, that I can assure you there will be, when we pass this law, many people that would lobby who won't. And many points of view which would otherwise be expressed that won't be. And many people that would hire a lobbyist that won't hire them, because they don't want to get involved with this kind of redtape.

I guess it is a tradeoff. And I think some reporting is necessary, and I think it is beneficial. But if we think we aren't throwing a wet blanket on first-amendment rights, we are kidding ourselves. Maybe we need some of that in the trade, but we are very definitely cutting down on expression of points of view by people through this legislation. We have to understand that.

Mr. COLE. Congressman, I agree that we want to do everything we can to protect against throwing a wet blanket on lobbying activity. I also agree that some people regard any reporting, even under current law if they felt they really had to file under it, as too much.

As you draft a lobby disclosure law, we hope this committee will try to make the reporting requirements both provide useful information and be as nonburdensome as possible.

I was trying to be responsive to that in some of the points I made in my testimony. I think much useful refinement of earlier proposals has been made in recent years. The experience in a number of the States lead us to feel that while there has been a lot of concern before legislation passed or even in the first year after it passed there has not been any evidence of organizations failing to undertake lobbying or dropping from the lobbying scene due to the existence of a lobbying disclosure law. The analysis we've seen from the States of Washington and California confirm this.

Mr. MOORHEAD. Thank you.

Mr. DANIELSON. Thank you, Mr. Moorhead. You have covered practically everything that I was going to ask. I have still some concern about the effort threshold, the 13 days from one employee or two or more having 7 each. I think it lends itself to being an opportunity to avoid registration, and I am going to be discussing that during the time of markup. If you would come up with any good ideas I would appreciate them. And that goes for anyone else who hears what my comment is.

I am just not comfortable with it. Maybe you can give me comfort but I don't have it right now.

Mr. COLE. Our feeling, Mr. Chairman, is that any threshold that can be drawn is subject to at least theoretical evasion.

In drawing the threshold last year, we feel the majority of the Judiciary Committee and the full House acted wisely. The alternative of having to keep track of any employee of an organization who spends even 1 day and to cumulate those to see if the threshold has been passed, is in our view too much to hold the organization responsible for. To hold an organization responsible for knowing about the activities of its employees all around the country who spend even 1 day lobbying, we think goes beyond the proper balance.

Conversely, we feel that an organization can properly be held responsible for knowing if one of its employees is spending 13 or more days lobbying or two or more are spending 7. I agree these are arbitrary figures, and it does create a theoretical loophole that there can be a number of individuals spending a single day or something less than 7 days lobbying. But I find that to be unlikely to materialize as a problem.

Let's consider an organization that wants to be effective in lobbying, such as the Airline Pilots Association you referred to earlier. The reason they have all those pilots coming into Washington to lobby is because they had professional lobbyists here on the scene who knew what was going on. I feel sure that they had somebody here spending at least 13 days in the calendar quarter lobbying, and probably several who spent more than 7 days lobbying.

If some group can organize a lot of their employees to lobby, they probably have at least one employee seeing the bill through the entire legislative process. But if a few organizations because of this potential loophole, we would prefer to address that at the time it becomes a major problem.

Mr. DANIELSON. We'll take it up during markup, and I am not going to let too much time be wasted on it, because I can live with either one. I am just not happy with it.

Would you please send us the memorandum you suggested on the *Boston Bank* case? Inasmuch as it has come up it could very well come up again, and we would appreciate your assistance. If the representative from ACLU is still present, would you favor us with a similar treatment with a memo on the *Boston Bank* case?

Mr. LANDAU. That is true.

Mr. DANIELSON. It's great to have all this help.

Mr. COLE. I would also like to include for the record a very brief compilation of some recent State court cases that have upheld lobbyist disclosure statute.

Mr. DANIELSON. Your memo would be welcome and I don't want you to misunderstand my reference of the study of the old lobbying law. We may very well include it in the record, but I am happy to have the chance to look at it.

Mr. COLE. Thank you very much.

[The complete memo follows:]

RECENT STATE COURT RULINGS ON LOBBY DISCLOSURE LEGISLATION

At present, all 50 states have at least some registration requirements for lobbyists. Since 1972, 41 states have adopted new registration and reporting statutes. And in 1977 and 1978 alone, 22 states acted to pass new lobby disclosure statutes or strengthened existing state laws on the subject.

The courts have been unanimous in upholding lobby registration and reporting requirements against First Amendment attack. The following recent court opinions have upheld state disclosure laws:

1. New Jersey: *New Jersey State Chamber of Commerce* v. *New Jersey Election Law Enforcement Commission*, Nos. A-199-75, A-350-75, A-366-75 (Super. Ct. App. Div. Dec. 20, 1977). The appellate court overturned a lower court ruling that the lobby disclosure provisions of the state statute were unconstitutional. The plaintiffs had alleged that the law was overly broad in scope. The appelate court upheld the constitutionality of the statute, adopting a requirement that the registration and reporting provisions not apply to an organization that has spent less than $750 annually to influence legislation. It should be noted that this statute requires the disclosure of the identities of contributors of more than $100. An appeal is pending before the state supreme court.

2. Michigan: *Advisory Opinion on Constitutionality of 1975* PA 227, 396 Mich. 123, 240 N.W. 2d 193 (1976). The Michigan Supreme Court, while striking a comprehensive political reform statute as embracing more than a single subject in violation of the state constitution, nonetheless stated that the lobby disclosure provisions of the statute would withstand both First Amendment and Equal Protection challenges. It is important to note that the statute provided for disclosure of the identities of contributors of over $500 to lobbying organizations. The court declined to find disclosure of information about grassroots lobbying unconstitutional per se, but chose to wait until the issue arose in a factual context before ruling.

3. California: *Institute of Governmental Advocates* v. *Younger*, No. LA 30904 (Calif. Sup. Ct.) (appeal pending). In January of 1978, a trial court judge invalidated a comprehensive reform measure as embracing more than a single subject in violation of the state constitution. The court also found unconstitutional the lobby disclosure provisions of the law. The case is on appeal to the California Supreme Court. On appeal, the plaintiffs have dropped their claim that the law, which many people view as requiring more detailed reporting than any proposal before the Congress, violates the First Amendment. They press only the claim that the scope of the reporting provision is too *narrow*, since it applies only to paid lobbyists, not to volunteer lobbyists.

4. Washington: *Fritz* v. *Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), *appeal dismissed*, 417 U.S. 902 (1974); *Young Americans for Freedom* v. *Gorton*, 83 Wash. 2d 728, 517 P.2d 189 (1974). These cases upheld lobby disclosure laws against First Amendment attack. The *Fritz* case involved a statute which required the disclosure of contributors to lobbying organizations. And the *Young Americans for Freedom* case specifically upheld the disclosure of information about grassroots lobbying.

Mr. DANIELSON. Now, our last and next witness is Congress Watch. I think a part of the Ralph Nader activities, is that the case?

Mr. SYMONS. I will be dealing with that.

Mr. DANIELSON. Congress Watch is represented by Howard J. Symons, staff attorney. You may proceed in whatever manner you choose. Without objection the entire statement will be included in the record.

[The complete statement follows:]

SUMMARY OF STATEMENT OF HOWARD J. SYMONS, PUBLIC CITIZEN'S CONGRESS WATCH, ON REFORM OF LOBBYING DISCLOSURE LAWS

1. Lobby disclosure reform is necessary to maintain and enhance the integrity of the legislative process. Passage of a lobby disclosure law can provide citizens with a better understanding of how that process operates. Reform will better enable them to evaluate the performance of their Senators and Representatives. It will deter actual corruption and avoid the appearance of corruption. Finally, improved lobby disclosure will enable Members to evaluate the myriad pressures to which they are regularly subjected.

2. Small organizations which make merely incidental contacts with Congress should not be covered by a reform bill because, if they were covered, many would cease expressing their views to the government, a constitutionally protected activity.

3. To cover significant lobbyists but not smaller groups, a threshold based on 30 hours per quarter of oral lobbying or on a 20 percent test would be appropriate.

4. Criminal sanctions are entirely inappropriate to the purposes of a lobby disclosure law. Civil sanctions should be imposed only when an organization had the specific intent to violate the law.

5. The Attorney General's power to investigate alleged violations of the act should be limited to cases where he has a reasonable suspicion that an organization has violated the act.

6. The legislative veto provision is unconstitutional, unworkable, and will pose enormous practical problems of uncertainty and delay.

7. Issue reporting requirements should be simplified so that an organization need only report up to 20 issues on which it makes lobbying communications.

8. Forced disclosure of individual contributors (as opposed to contributing organizations) raises serious constitutional questions and should therefore be strictly limited. If individual names are required to be disclosed, only the largest contributors who exercise control over a lobbying organization should be listed.

9. Registered lobbying organizations should disclose their large grassroots lobbying campaigns, but disclosure requirements cannot offend First Amendment rights.

10. No obligations whatsoever should be placed on volunteers because the agent registration purpose of the act does not justify their inclusion, because coverage of volunteers is unconstitutional, and because coverage of volunteers would reverse an established governmental policy of encouraging volunteerism.

STATEMENT OF HOWARD J. SYMONS, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Mr. Chairman, Members of the Subcommittee, my name is Howard J. Symons. I am staff attorney—and a registered lobbyist—with Public Citizen Congress Watch. I am pleased to be testifying before you today.

Once again, this subcommittee has undertaken the difficult task of writing lobbying disclosure legislation. Public Citizen supports your efforts, as we did during the last two Congresses. We believe that a properly-drawn disclosure statute serves a compelling governmental interest. In fact, lobby disclosure will serve four goals.

First, disclosure will provide citizens with information about the organizations that devote considerable time and money to efforts to influence legislation. Lobbyists, of course, can play an instrumental role in the workings of Congress. And that is how it should be. Members of Congress cannot, and should not, cut themselves off from the diverse viewpoints that American society offers. But we must also recognize that many lobbying groups engage in sophisticated, continuing, well-funded, and hidden attempts to push and pull legislation in directions that only serve their own interests. These groups do not stand outside the legislative process; on the contrary, they are an integral part of that process.

The success of the democratic form of government depends upon an adequately educated and informed citizenery. But citizens will not be adequately educated and informed about something as basic as the way their laws are made until they are aware of the professional lobbying groups that deal with Congress on a daily basis, and until they have an understanding of the role that these groups play in the dance of legislation. Improved lobbying disclosure will give the electorate that understanding, and can inspire more direct citizen participation in government.

Lobby disclosure will also allow citizens to determine whose interests public officials are representing. By correlating a Member's votes with an organization's positions, citizens can discover whether that Member is unusually sensitive to the views of a particular lobbyist. Such information would enable constituents to identify their Member's political leanings more precisely than is often possible solely on the basis of party labels and campaign speeches. CF., *Buckley* v. *Valeo*, 424 U.S. 1. 66–67 (1976). Voters will exercise their franchise more knowledgeably and more effectively. And increased constituent awareness will likely encourage Members of Congress to become more accountable to the citizens that elect them.

Lobby disclosure serves a third goal: it deters actual corruption and avoids the appearance of corruption by bringing significant lobbying activities into the open. The Supreme Court has held that the deterrence of actual corruption and the avoidance of the appearance of corruption are government interests substantial enough to justify the disclosure of campaign contributors. *Buckley, supra.* The same desire to avoid the appearance of and deter corruption is a compelling reason to require disclosure of groups that raise and spend large amounts of money to influence the legislative process.

Finally, improved lobby disclosure will enable Members to evaluate the views presented to them on a given issue. As the Supreme Court noted when it upheld the 1946 Lobby Act:

"Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment masquerading as proponents of the public weal." *U.S.* v. *Harris*, 347 U.S. 612, 625 (1954).

Once it obtained information on the groups that have lobbied a piece of legislation Congress might be encouraged to reash out and involve non-participating but interested groups. If lobbying has been massively one-sided, a chairman, committee, or individual Member will know that there must be an affirmative effort to solicit the views of unorganized but important communities affected by the legislation.

In sum, lobby disclosure is necessary to maintain and enhance the integrity of a basic government process—the writing of the laws that govern us all. No lobby disclosure proposal places restrictions on lobbying or the amount of money that a group can spend to influence legislation. H.R. 81 in particular merely provides "for a modicum of information from those who for hire attempt to influence legislation or who collect and spend funds for that purpose." *U.S.* v. *Harris, supra*. The years since 1946 have witnessed the growth of well-oiled lobbying machines whose outlines remain shadowy though their impact on legislation is unquestioned. Lobby disclosure reform would bring these machines out of the shadows into the sunshine—where each citizen and each Member of Congress could evaluate their considerable impact on public policy.

For these reasons, Public Citizen supports the enactment of a workable lobbying bill.

We must also stress, however, that a poorly designed and drafted version of a lobby disclosure reform measure would have a serious chilling effect on some people's exercise of their right to petition the government. Lobby disclosure can affect First Amendment rights. *US* v. *Harris, supra*. Certain small groups, for instance, may refrain from contacting Congress if they also had to comply with lengthy disclosure requirements. These organizations might opt out of the political process for any of a number of reasons: the cost of compliance; the stigma of being labeled a lobbyist; the fear of government meddling in the organization's affairs; or the assessment by the organization that the benefits of contacting Washington would be outweighed by the burdens of complying with the registration and reporting requirements. The organizations which are likely to cease communicating with Washington are not the organizations which have testified before you. Public Citizen, Common Cause, the AFL–CIO, the ACLU, the Chamber of Commerce, and the National Association of Manufacturers will all continue to lobby. The organizations which will opt out if they are covered are small businesses, local labor unions, and grass roots citizen organizations. If these groups abandon the legislative process, government policy will soon reflect only the views of those interest groups which can afford to continue contacting Washington.

Congress, therefore, has a choice. It can write a bill forcing disclosure of every attempt to influence legislation at the risk of freezing more organizations out of the legislative process. Or it can write a bill that elicits information on the lobbying efforts of the organizations which spend significant effort and money on lobbying, while protecting the constitutional rights of all who would like their voice heard in Washington. Because we are dealing with First Amendment rights, we firmly believe that the Congress should risk under-inclusiveness rather than over-inclusiveness. To do otherwise could result in an unworkable, if not unconsitutional, bill. A lobbying disclosure statute should only impose burdens on those organizations able to shoulder them and which engage in a level of lobbying activity sufficient to warrant their coverage.

H.R. 81 attempts to strike the proper constitutional balance. However, there are still a number of problems with the bill as drafted. These are the most important:

1. *Threshold.*—The threshold for organizations that employ individuals who make lobbying communications (as opposed to organizations that retain such individuals) is too low and too burdensome. Under Section 3(a)(2), an individual employed by an organization need only make lobbying communications on all or any part of 13 days in a quarter before the organization must register, provided the organization spends $2,500 on lobbying communications during that quarter. An individual who spends one hour per week on lobbying communications would bring an organization within the bill's reporting requirements. And because "lobbying communications" includes written as well as oral presentations to Congress, that organization could be required to register even if none of its employees so much as telephoned a staffer; it would come within the act if its contact with Congress were limited to several letters or fact sheets that required 13 hours to prepare. Thousands of small businesses, local labor unions, and citizen groups throughout the country would have to file reports.

Problems could also arise for the small group that must calculate whether it has spent more than $2,500 for lobbying communications. A money threshold requires an organization to allocate its expenses between lobbying activities and non-lobbying activities. Employees would have to keep time logs to determine what portion of their salaries were attributable to lobbying. Organizational expenses (mailing, print-

ing, telephones) that go only partially for lobbying need not be counted toward the $2500 benchmark unless those expenses can be directly allocated to lobbying activities "with reasonable preciseness and ease," accordinging to Section 2(6)(A)(ii). But what is "reasonable preciseness and ease?" Only the Comptroller General knows for sure, and he's not telling—yet. Allocation rules that seem simple and fair to the General Accounting Office may be impossibly burdensome to a local consumers' council—whose two paid employees planned to spend a month or so preparing and mailing information to members of the Commerce Committee in support of stronger air bag legislation.

A money threshold also opens the door to government abuse of power. An Attorney General who suspected that an organization had engaged in lobbying communications and had spent more than $2500 without registering could demand to audit the organization's books, under the broad language of Section 8(a). Within the last decade, government agencies have misused their power to audit as a means of harassing or intimidating organizations perceived to be "enemies" of the government. While we would not expect the current Attorney General to misuse his power in this way, we do feel that equipping an official with a broad power to audit raises the chilling possibility that unpopular groups might be harassed.

Rather than the threshold of Section 3(a)(2), we would prefer a threshold based on the time that employees of an organization spent on oral lobbying communications. No organization would have to register unless it employed at least one person who spent at least 30 hours per quarter making oral communications—or at least two people, each of whom spent 15 hours. Basing the threshold solely on oral communications eliminates the problem of determining the day of which a written communication was made, or of figuring out how much time was spent in drafting a written communication. Nor is there any need to allocate expenses between lobbying and non-lobbying activities.

Alternatively, we suggest a return to the 20 percent test considered by the subcommittee several years ago. Under that test, an organization would have to register only if it employed a person who lobbied at least 20 percent of the time during a quarter. A time threshold is enforceable, with minimal intrusion on First Amendment rights: if the Attorney General suspects unregistered lobbying, he can canvass Members and staff to determine whether the law has been violated.

Moreover, the time threshold is preferable because it concerns itself with actions essential to lobbying—direct communications between someone paid to influence legislation and someone in a position of power. If an organization has one person who spends 30 hours in three months making oral communications (or one person who spends an average of eight hours per week lobbying), that organization is undeniably a lobbying organization.

We support the Section 3(a)(1) threshold as drafted. An organization that retains an outside consultant or a law firm to make or prepare lobbying communications can easily segregate the retainers it pays. Because retainers are discrete expenditures (especially in contrast to the amorphous "mailing, printing, advertising, telephones, consultant fees, or the like" included under the term "expenditure"), any audit that the Attorney General might have to conduct can be narrowly focused.

2. *Sanctions.*—Section 11(b) imposes criminal penalties in the event of a knowing and willful violation of the act. We believe that criminal sanctions are entirely inappropriate. Intimidated by the possibility, however remote, of a jail term, citizen groups (which generally cannot afford legal counsel) will choose not to exercise their Constitutional rights rather than risk prosecution. Since the purpose of the act is disclosure, injunctive relief to compel reporting (but not to limit lobbying), coupled perhaps with a civil fine for not doing so, are appropriate sanctions.

Section 11(a), which imposes a civil penalty of up to $10,000 for a knowing violation, will also deter citizen activism. Under this section, an organization could be severely penalized for a mere misinterpretation of a definition or some other requirement of the Act. Whether or not such a severe fine would ever be imposed, the mere possibility—like the possibility of criminal prosecution—is intimidating to the unsophisticated, and may well cause some organizations to forego their right to petition. We beleive that civil sanctions should be imposed only where an organization had the specific intent to violate the law.

3. *Enforcement.*—The Attorney General's enforcement authority is to broad. His unchecked power to "investigate alleged violations" of the act, granted in Section 8(a), poses a potential danger to small organizations which could be driven out of business by ill-founded investigations. Because an investigation is likely to impinge on the exercise of First Amendment rights, the Attorney General should have to make a preliminary showing that he has reason to believe an organization has violated the act. We endorse the Justice Department's proposed use of the Civil Investigative Demand if the Attorney General has a reasonable suspicion that the

act has been violated. However, we would suggest that only the Attorney General or the Deputy Attorney General have the authority to issue a CID, that a CID be issued for a fixed period of time, say, 90 days.

In view of the fundamental rights at stake, we believe that the AG should have the power to institute a civil action only when he has probable cause to believe that a violation occurred, and informal methods of conference or conciliation have failed. Under Sections 8(b) and 8(c) as drafted, the AG apparently may begin court proceedings if he simply has "reason to believe" that the law has been violated.

4. *Congressional veto.*—Section 10, which provides for a one-house veto of the Comptroller General's regulations, must be struck from the bill. The legislative veto is unconstitutional, unworkable, and will pose enormous practical problems of delay and uncertainty. Congress ought to be concerned about the impact regulations will have on the exercise of Constitutional rights—but the answer is more tightly drafted legislation and more effective oversight rather than piecemeal attention to individual rules. Attached is an article detailing Public Citizen's position against the legislative veto.

5. *Issue reporting.*—Section 6(b)(6) requires that each lobbying report contain a description of the issues upon which a lobbying organization "spent a significant amount of its efforts." It is left to the Comptroller General to determine what is a significant amount of time. His regulations will doubtlessly result in additional recordkeeping burdens, as organizations winnow their significant issues from the insignificant. The burden will be heaviest for smaller organizations that can ill-afford to take the time to aggregate the man-hours spent on a particular issue. We would prefer a simple requirement that an organization report up to 20 issues on which it makes lobbying communications. Few organizations work on substantially more than 20 issues during a single quarter.

H.R. 81 does not deal with disclosure of contributors to lobbying organizations, grassroots lobbying campaigns, or the activity of unpaid chief executive officers. However, since these issues are likely to arise in the subcommittee, we offer the following comments:

Disclosure of contributors.—We favor the disclosure of organizations that contribute $3,000 or more to a lobbying organization. Such disclosure is essential if the public is to know which groups are behind the activities of innocuous sounding lobbyists. (Recall the celebrated example of the Calorie Control Council.)

We oppose a similar blanket disclosure of individual contributors. Individual disclosure works a serious hardship on voluntary organizations, makes fund raising more difficult, violates the constitutional rights of the contributors, serves no compelling governmental interest, and discriminates in favor of corporate lobbying. Forced disclosure of contributors to controversial groups can cause the individual contributor harassment or serious embarrassment, thereby threatening the freedom of association articulated by the Supreme Court twenty years ago. *NAACP* v. *Alabama*, 357 U.S. 449 (1958). If Congress wants to know which individuals (as opposed to which organizations) control lobbying organizations, then it should require disclosure of those individual contributors who not only give a significant amount (more than $3,000), but whose contributions also account for more than 10 percent of an organization's lobbying budget.

Grassroots lobbying.—We would support a provision to require registered lobbying organizations to disclose their large grassroots lobbying campaigns (though we oppose forcing organizations that do only grassroots work to register as lobbyists).

A large campaign might be defined as one that costs the reporting organization (in terms of out-of-pocket expense and amortized sunk costs) more than $25,000.

Many Washington lobbying organizations spend considerable effort and money to develop letter-writing and telegram campaigns on certain issues. Furthermore, a whole outside industry has developed to service these needs. Richard Viguerie is just the best known of these retained lobbying solicitation outfits. The American people have a right to know of Viguerie's massive efforts opposing the Panama Canal and his efforts opposing labor law reform—and they have a right to know Common Cause's or Public Citizen's efforts on behalf of public financing of Congressional elections.

Some civil libertarians have concerns about the disclosure of communications between an outside group and private citizens. Public Citizen shares those concerns. We oppose disclosure of the names of Members or others who receive those communications, and we oppose requirements to track individual phone calls and individual letters. We do not, however, oppose disclosure of large well-organized campaigns, where the lobbying organization lays out and budgets a grassroots effort. We do not oppose disclosure of retainees who are hired to conduct that effort. Of course, reporting requirements must not be burdensome. We would suggest that lobbying organizations describe their large-scale grassroots campaigns in terms of their total

costs and the issues to which they relate. This limited solicitation reporting does not offend the First Amendment.

There has been a great deal of discussion about the difference between direct and indirect lobbying. Many people have argued that grassroots efforts are examples of indirect lobbying, and therefore ought not to be covered by a lobby disclosure law. However, the *Harriss* court made it clear that "direct communication with members of Congress" includes pressures "exerted by the lobbyists themselves or through their hirelings *or through an artificially stimulated letter campaign.*" 347 U.S. 612, 620 (Emphasis added). Congress can require disclosure of these sorts of direct lobbying.

Congress cannot, however, require organizations to disclose their efforts to "propagandize the general public" that do not actually solicit people to lobby. *Id.*, at 621[1] Public Citizen and other organizations often send out information to their supporters or to the public at large about issues pending in the legislatures. In so doing, those organizations are performing a valuable public function. Regular publications and electronic news provide a very limited amount of information about the actions of Congress. It is the publications of national organizations, whether they are comprised of union members, citizen groups, or businesses, which inform millions of Americans about pending legislation of interest to them. Citizens need this information to make informed electoral decisions. And members of Congress need to have an informed electorate in order to support their decisions when they decide to buck the special interests. When an organization does no more than publish information about pending policy decisions, that organization is clearly beyond the reach of any constitutional disclosure requirements.

Lobbying by unpaid chief executive officers.—We oppose any effort to impose registration, record-keeping, and reporting obligations on unpaid volunteers working on behalf of an organization. Volunteer coverage would render a bill unconstitutional, and is completely inconsistent with the purposes of lobbying disclosure. Such disclosure is essentially a type of agent registration, so that members of Congress and the American people can learn on whose behalf each lobbyist is working, and how much money is involved in trying to influence bona fide agents. Of course, volunteers may advocate an organization's position, but they are essentially free to advocate any position—which is very different from a paid employee or agent who lacks this sort of freedom.

Not only is volunteer coverage unwarranted by the purposes of the legislation, it is also constitutionally suspect. In *Harriss*, the Supreme Court relied on the fact that the 1946 Act covered only those who attempted to influence legislation for hire. The court would have probably struck down the 1946 Act if burdens had been placed on unpaid citizens who petition the government.

Enormous enforcement problems would result from coverage of volunteers. How is an enforcing agent supposed to determine whether an unpaid person is advocating views on behalf of an organization? With a paid person, the answer is simple. If the paid person is on company time, working out of the company office, or sending the letter on company stationary, that person is lobbying on behalf of an organization. But how can it be determined whether a gun owner is lobbying on behalf of the NRA or because of personal opposition to gun control? How can it be determined whether a right-to-lifer is lobbying on behalf of the U.S. Catholic Conference or as matter of personal conviction?

The payment of money is the clear, bright line between agency and independence. Once that line is crossed, no principled reason exists not to require every citizen to send the Comptroller General a xerox of every letter sent to Congress.

Coverage of volunteers would also reverse a two century tradition of encouraging citizens to form volunteer organizations to address their concerns. Our law and our ethos encourage volunteerism in all fields: political parties, hospitals, charities, social service organizations. To now place unnecessary burdens on any unpaid members of organizations which petition the government would tend to discourage volunteering and would imply that the business of our society should be left to paid professionals. To breach the principal of volunteerism at all is to jeopardize it entirely. We do not think that Congress intends to or should make such a statement.

Mr. Chairman, Members of the Subcommittee, we have appreciated this opportunity to testify.

Thank you.

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[1] Similarly, the *Buckley* court upheld the disclosure of expenditures made to advocate a specific electoral outcome—but found impermissible the disclosure of expenditures for mere discussion of public issues. 424 U.S. 1, 79 (1976).

[The Nation, Oct. 28, 1978]

Congressional Trespass—The Legislative Veto Is Bad Law

(By Mark Green and Frances Zwenig)

With the federal bureaucracy about as popular as Asian flue, the idea of the "legislative veto"—whereby Congress can overrule selected agency decisions—is proving nearly irrestistible to most U.S. Representatives. The House has repeatedly supported legislative veto provisions by margins of 2 to 1—or the same ratio by which the Senate has *rejected* them. And since President Carter has denounced the practice as an "infringment on the executive's constitutional duty to faithfully execute the laws," the state seems set for a major intra- and interbranch showdown.

The legislative veto allows the Congress or some part of it—one house or even one committee, depending on bow the veto clause is worded in the bill under consideration—to block an executive or agency action within a specified time period, usually sixty or ninety working days. Not cast as a statute, the veto needs neither the signature of the President nor, if it is a "one house veto," the concurrence of the other chamber. Such a provision appears 295 times in 195 pieces of legislation now on the books and covering such matters as Federal Election Commission regulations, international arms sales, Office of Education rule making and most executive reorganizations.

The impulse behind the legislative veto movement is understandable and its rhetoric fetching. As Presidents appropriated powers from acquiescent Congresses, and as administrators increasingly allocated billions in benefits and costs, Congress became less a branch than a twig of government. And members often bear the brunt of constituent complaints about an unresponsive and allegedly unfeeling bureaucracy. So legislators are drawn to the legislative veto as a way to maintain continuing control over statutes and bureaucrats. "Who makes the laws of this country," asks Rep. Elliott Levitas, "the elected representatives of the people or the unelected bureaucrats?" It is understandable, but also unworkable and probably unconstitutional. As with so many simple solutions, the legislative veto loses its appeal the closer one examines it.

The Burden of Congressional Review. Members of Congress—a record number of wbom are voluntarily retiring—already complain of their workload, of the trivia that burden their desks. Congress digests 8,000 bills a year and the average member casts about 700 votes annually. To load onto this structure the responsibility to review tens of thousands of agency decisions seems both cruel and unworkable. Does this "anti-bureaucracy" Congress really want to establish itself as a super-regulatory body, involved in day-to-day agency decisions? (Congressional review would then follow agency review and precede possible court review; proponents may next clamor to review systematically not only agency decisions but judicial decisions as well, since the principle of review and the rhetoric about "unelected bureaucrats affecting our lives" is surely the same.)

It took the Food and Drug Administration seven years and a hearing record of 24,000 pages to decide that peanut butter should be made of at least 87 percent not 90 percent peanuts; a Library of Congress study found that in one typical month, February 1976, nine agencies within the jurisdication of the House Interstate and Foreign Commerce Committee issued 149 rules or proposed rules. Could Congress review such complex proceedings and still perform its primary constitutional job of passing laws? Does it want to assume political responsibility for all the rules it doesn't veto and which turn out to be unpopular?

The Politics of Congressional Review. The legislative veto would turn a chamber of Congress, or the relevant committee, into a kind of political court of last resort. Wealthy, well-organized and experienced special interests would have the resources and motivation to lobby massively against an unfavorable ruling. But nonwealthy, unorganized, individual citizens affected by that rule could not comparably make their case. Often, an affected industry would need to do no more than persuade a key subcommittee chairman or panel—to whom it perhaps gives money in what are euphemistically called "campaign contributions"— who in turn could tilt a full committee and chamber. With corporate "political action committee" proliferating and dollars in the tens of millions at stake over specific rulings—as, for example, when the FTC rules that optometrists can't prohibit price advertising, HEW promotes the use of generic name drugs. OSHA issued strict brown-lung standards—one would expect optometrists, drug houses and textile companies to pour millions into last-ditch lobbying compaigns. "Rather than increasing Congressional control," says Rep. Robert Eckhardt, "this legislation will simply provide more business for the high-priced Washington lobbyist."

Representative Levitas answers this criticism with, "I think it is naive to say that federal agencies are not now 'politicized.' Rule making involves legislative decisions, and most legislative decisions are political." But surely that is too facile a comparison: politics can of course creep into agency judgments when ex parte and conflict-of-interest rules fail, or when the appointment process doesn't screen out rigid ideologues. This, though, is small potatoes when compared to a system of pure politics that presumes secret meetings and the exchange of money between interested parties and Congressional "judges."

The Effect on the Agency Process. Congressional veto plans promise to plant several land mines in the path of effective agency decision making.

Adding two or three months (the sixty- or ninety-day provisions) to the final promulgation of all rules, while only a few are legislatively reviewed or vetoed, would delay the entire regulatory process. Since the legislative review could apply only to rule-making proceedings (involving general policy setting) and not adjudications (involving individual disputants), agencies will have a new motivation to engage in more adjudications than rule makings—at the very time that the latter are seen as more efficient use of agency resources.

There is also the overall "politicization" of the agency process. Mr. Carter predicted in a July 1, 1977 statement that "regulators operating under such laws would seek to avoid vetoes. They would therefore tend to give more weight to affected groups' perceived political power and less to their substantive arguments." Rep. John Moss, chairman of the House Oversight and Investigations Committee, told the House Rules Committee in testimony that "lobbyists could argue that if an agency fails to change a proposed rule, they would go to the Congress and seek a veto. Two options are then available. Either the agency could submit to the threat, and drop or weaken the rule, or the agency could seek public and Congressional support. These options undermine the nonpartisan nature of administrative agencies." Actually, a third and more probable option would be for the agency staff to test out its possible rule with the staff of its oversight committee. The committee staff and chairman could then quietly let the agency staff or commissioners know what they would consider acceptable, a judgment of obvious weight. Expert regulatory judges sifting through the evidence would then become about as relevant as the electoral college.

Such anxieties are not conjectural. In an analysis of the history of five federal programs subject to legislative veto prepared for the Adminstrative Conference of the United States, legal scholars Harold Bruff and Ernest Gellhorn document how regulators second-guess themselves about political ramifications of their rules and how legislative vetoes would "exacerbate current problems of the 'capture' of the independent commissions by their regulated constituencies."

The Constitutional Issue. Constitutional arguments rarely arouse members of Congress, who worry more about the voters in 1978 than about the Founding Fathers in 1787. Still, it should be hard to forget that Article I provides that legislation, to be enacted, must pass both houses of Congress and be signed by the President, unless a veto is overridden by two-thirds of each chamber. The legislative veto simply erases the President from this process. Also, the principle of separation of powers of Articles I and II—that Congress passes the laws and the President executes them—is stood on its head when the President proposes and Congress disposes.

Advocates of legislative veto argue that if congress can delegate quasi-legislative powermaking, it can condition that delegated power with a Congressional veto, and that this approach has been around a long time without constitutional repudiation (and so, it should be noted, were racial segregation and the death penalty until 1954 and 1975). The Supreme Court has never definitively ruled on the issue.

Support for the legislative veto in the House has been broad and unyielding. Two years ago, for example, a generic bill to apply it across the legislative board came within two votes of passage on the suspension calendar, 265 to 135 (two-thirds needed to pass). In both April and September of this year, in what may be a harbinger of future stalemates. The House opposed a conference report on an FTC amendments-authorization package because it lacked a legislative veto provision.

Although the House has been unyielding in its support of legislative veto, the popularity of the idea is now colliding with some substantial counter-trends. There is the reality of unblinking Senate opposition—both chambers being necessary for any generic legislation to pass. The anit-bureaucracy hysteria may well recede in a nonelection year. Editorial reaction, including comment from The New York Times, Washington Post, Washington Star, and Wall Street Journal, has been overwhelmingly critical of legislative veto. The President is dead set against it, as is the House leadership. And many members, admitting privately what they cannot say on the hustings, agree that the idea sounds great but is overkill. Or, as an influential

House sponsor of this measure admitted candidly. "It's an easy way for these guys to demagogue against the bureaucracy."

Still, legislative veto will survive as long as the problem that propels it remains unanswered—how to oversee the bureaucracy. A majority of the House now sees it as a way to give the agencies a conscience, using Mencken's definition of conscience as the feeling that someone may be watching. But it makes a little sense to replace an Imperial Presidency with an Imperial Congress. As Harold Laski wrote in 1940, "No democracy in the modern world can afford a scheme of government the basis of which is the inherent right of the legislature to paralyze the executive power."

And there are more effective ways for a frustrated Congress to monitor or curb agency actions. If the legislators don't like the decision of an executive or regulatory agency, they can pass a law to reverse it or pressure the agency through the oversight process. Thus when the Department of Transportation implemented Henry Ford's unpopular suggestion of a buzzer-interlock system in new cars, Congress voted its disapproval; when parts of the Real Estate Settlement Procedures Act proved ineffective, those parts were simply repealed. And hearings by Senator Kennedy on the Food and Drug Administration and by Senator Metzenbaum on the Department of Energy have recently coaxed these agencies to make desired changes. Before Congress pursues the radical surgery of vetoing the executive, it should at least vigorously pursue that antibiotic called "oversight."

Going further, Congress has the authority to abolish an agency it thinks is performing poorly (as it appears about to do to the Renegotiation Board) or to deregulate it in whole or part (as it is about to trim the Civil Aeronautics Board). It can refuse to confirm nominees whose views if finds uncongenial. It can pass the legislation, now pending, that would provide "public participation funding," and thus encourage citizen groups to take part in agency proceedings when they have a contribution to make but lack the funds needed to put in an appearance.

As House Government Operations Committee chairman Jack Brooks has said, "Congress is not a pitiful, helpless giant in its dealings with the bureaucracy." There are alternatives that would not make the cure worse than the disease, that would not involve Congress in reversing a forty-year tradition of delegating day-to-day decisions in complex areas to expert agencies already subject to Congressional review. Attacking the bureaucracy may be good politics, but legislative veto is bad law.

Legislative Veto

SOME CASE HISTORIES

When Transportation Secretary Brock Adams announced a phase-in of tacit restraint systems (air bags) on 1982–84 cars, auto safety advocates were dismayed by the delay. Auto engineers themselves had said that such life-saving devices could easily be installed on 1980 models. However, the air bags had been made subject to a legislative veto provision. As a result, says Clarence Ditlow, head of the Center for Auto Safety, "DOT issued a standard so lenient that Congress would have no grounds to overrule it. The department was definitely looking over its shoulder at the legislative veto problem."

Despite complaints about foxes guarding chicken coops, the House of Representatives in 1975 vetoed a Federal Election Commission regulation requiring that campaign disclosure reports be first filed with the commission: that same year the Senate vetoed a regulation requiring the disclosure of so-called "office accounts." This process offended Judge George MacKinnon, who dissented from a decision that refused to rule on the constitutionality of the legislative veto. In *Clark* v. *Valao,* he argued that FEC would be pressured into making deals with the very politicians they were supposed to be overseeing, "lead[ing] the commission into the possibility, or temptation, of subordinating its best executive judgment to that of Congress."

HEW's Office of Education, because of a legislative veto provision in its statute, each year submits to Congress a schedule of expected family contributions for various levels of family income as part of an educational grant program. The House then routinely introduces a "resolution of disapproval" and later, just as routinely, tables it. This ritual increases the political leverage of a handful of staff on key House committees who negotiate these schedules with O.E.

The House, led by Georgia Democrat Elliott Levitas, has twice this year refused to adopt a routine "conference report" on the Federal Trade Commission's authorization because it lacked the veto provision. And at the end of this past session of Congress, Levitas threatened to attach a legislative veto amendment to the immensely popular airline deregulation bill, although it is well known that the Senate would never accept such a provision. (He dropped his threat when the chairman of

the Public Works Committee, Harold Johnson [D., Calif.], promised to vote against the FTC conference report.)

TESTIMONY OF HOWARD J. SYMONS, REPRESENTING PUBLIC CITIZEN'S CONGRESS WATCH

Mr. SYMONS. Mr. Chairman, members of the subcommittee, my name is Howard J. Symons. I am a staff attorney—a registered lobbyist—with Public Citizen's Congress Watch. I am pleased to be testifying before you today.

Once again, this subcommittee has undertaken the difficult task of writing lobbying disclosure legislation. Public Citizen supports your efforts, as we did during the last two Congresses. We believe that a properly drawn disclosure statute serves a compelling governmental interest. In fact, we believe that lobby disclosure will serve several goals.

First, disclosure will provide citizens with information about the lobbying organizations that devote considerable time and money to influence legislation. These groups do not stand outside the legislative process; on the contrary, they are an integral part of that process.

The success of the democratic form of government depends upon an adequately educated and informed citizenry. But citizens will not be adequately educated and informed about something as basic as the way their laws are written until they are aware of the professional lobbying groups that deal with Congress on a daily basis, and until they have an understanding of the role that these groups play in the dance of legislation. Improved lobby disclosure will give the electorate that understanding, and can inspire more direct citizen participation in the Government.

Lobby disclosure serves to allow citizens to determine whose interests public officials are representing.

Lobby disclosure serves a second goal: It deters actual corruption and avoids the appearance of corruption by bringing significant lobbying activities into the open. The Supreme Court has held that the deterrence of actual corruption and the avoidance of the appearance of corruption are Government interests substantial enough to justify the disclosure of campaign contributors *Buckley, supra.* The same desire to avoid the appearance of and deter corruption is a compelling reason to require disclosure of groups that raise and spend large amounts of money to influence the legislative process.

Finally, improved lobby disclosure will enable Members to evaluate the views presented to them on a given issue. Once it obtained information on the groups that have lobbied a piece of legislation Congress might be encouraged to reach out and involve nonparticipating but interested groups. If lobbying has been massively one-sided, a chairman, committee, or individual Member will know that there must be an affirmative effort to solicit the views of unorganized but important communities affected by the legislation.

In sum, lobby disclosure is necessary to maintain and enhance the integrity of a basic government process—the writing of the laws that govern us all. No lobby disclosure proposal places restrictions on lobbying or the amount of money that a group can spend to influence legislation.

We must also stress, however, that a poorly designed and drafted version of a lobby disclosure reform measure would have a serious chilling effect on some people's exercise of their right to petition the Government. Lobby disclosure can effect first amendment rights. *U.S.* v. *Harris, supra.* Certain small groups, for instance, may refrain from contacting Congress if they also had to comply with lengthy disclosure requirements. These organizations might opt out of the political process for any of a number of reasons: the cost of compliance; the stigma of being labeled a lobbyist; the fear of Government meddling in the organizations affairs; or the assessment by the organization that the benefits of contacting Washington would be outweighed by the burdens of complying with the registration and reporting requirements.

First: *Threshold.*—The threshold for organizations that employ individuals who make lobbying communications (as opposed to organizations that retain such individuals) is too low and too burdensome. An individual employed by an organization need only make lobbying communications on all or any part of 13 days in a quarter before the organization must register, provided the organization spends $2,500 on lobbying communications during that quarter. An individual who spends 1 hour per week on lobbying communications would bring an organization within the bill's reporting requirements. Under this standard, thousands of small businesses, local labor unions, and citizen groups throughout the country would have to file reports.

Problems could also arise for the small group that must calculate whether it has spent more than $2,500 for lobbying communications. A money threshold requires an organization to allocate its expenses between lobbying activities on one hand and nonlobbying activities on the other. Employees would have to keep time logs to determine what portion of their salaries were attributable to lobbying.

A money threshold also opens the door to Government abuse of power. An Attorney General who suspected that an organization had engaged in lobbying communications and had spent more than $2,500 without registering could demand to audit the organization's books, under the broad language of H.R. 81 and H.R. 1979.

Alternatively, we suggest a return to the 20 percent test considered by the subcommittee several years ago. Under that test, an organization would have to register only if it employed a person who lobbied at least 20 percent of the time during a quarter.

Moreover, the time threshold is preferable because it concerns itself with actions essential to lobbying—direct communications between someone paid to influence legislation and someone in a position of power. If an organization has one person who spends 30 hours in 3 months making oral communications (or one person who spends an average of 8 hours per week lobbying), that organization is undeniably a lobbying organization.

We support H.R. 81's threshold as drafted. An organization that retains an outside consultant or law firm to make or prepare lobbying communications can easily segregate the retainers it pays. Because retainers are discrete expenditures—especially in contrast to the amorphous "mailing, printing, advertising, telephones, consultant fees, or the like" included under the term "expenditure"—

any audit that the Attorney General might have to conduct can be narrowly focused.

Second: *Sanctions.*—We believe that criminal sanctions are entirely inappropriate. Intimidated by the possibility, however remote, of a jail term, citizen groups (which generally cannot afford legal counsel) will choose not to exercise their constitutional rights rather than risk prosecution. Since the purpose of the act is disclosure, injunctive relief to compel reporting—but not to limit lobbying—coupled perhaps with a civil fine for not doing so, are appropriate sanctions.

A third issue is enforcement. We endorse the Justice Department's proposed use of the Civil Investigative Demand if the Attorney General has a reasonable suspicion that the act has been violated. However, we would suggest that only the Attorney General or the Deputy Attorney General have the authority to issue a CID, and that a CID be issued for a fixed period of time, say, 90 days.

We favor the disclosure of organizations that contribute $3,000 or more to a lobbying organization. Such disclosure is essential if the public is to know which groups are behind the activities of innocuous sounding lobbyists. (Recall the celebrated example of the Calorie Control Council.)

We oppose a similar blanket disclosure of individual contributors. Individual disclosure works a serious hardship on voluntary organizations, makes fund raising more difficult, violates the constitutional rights of the contributors, serves no compelling governmental interest, and discriminates in favor of corporate lobbying. Forced disclosure of contributors to controversial groups can cause the individual contributor harassment or serious embarrassment, thereby threatening the freedom of association articulated by the Supreme Court 20 years ago. *NAACP* v. *Alabama.*

Grassroots lobbying.—We would support a provision to require registered lobbying organizations to disclose their large grassroots lobbying campaigns—though we oppose forcing organizations that do only grassroots work to register as lobbyists.

A large campaign might be defined as one that costs the reporting organization—in terms a total of out-of-pocket expense and amortized sunk costs—more than $25,000.

There has been a great deal of discussion about the difference between direct and indirect lobbying. Many people have argued that grassroots efforts are examples of indirect lobbying, and therefore ought not to be covered by a lobby disclosure law. However, the Harriss court made it clear that "direct communication with Members of Congress" includes pressures "exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign." Congress can require disclosure of these sorts of lobbying.

Congress cannot, however, require organizations to disclose their efforts to "propagandize the general public" efforts that do not actually solicit people to lobby. Public Citizen and other organizations often send out information to their supporters or to the public at large about issues pending before the legislatures. In so doing, those organizations are performing a valuable public function. When an organization does no more than publish information

about pending policy decisions, that organization is clearly beyond the reach of any constitutional disclosure requirements.

Finally, I turn to lobby by unpaid volunteer. The payment of money is the clear, bright line between agency and independence. Once that line is crossed, no principled reason exists not to require every citizen to send the Comptroller General a Xerox of every letter sent to Congress. To now place unnecessary burdens on any unpaid members of organizations which petition the Government would tend to discourage volunteering and would imply that the business of our society should be left to the paid professionals. To breach the principal of volunteerism at all is to jeopardize it entirely. We do not think that Congress intends or should make such a statement.

Mr. Chairman, I appreciated this opportunity to testify.

Thank you.

Mr. DANIELSON. Thank you. And as you have in the past, your organization, you have been very helpful to us. I very much appreciate the attendance of all the witnesses who have come today and come on other days. Just on the rare possibility that there may be someone in the audience who's not a lobbyist, I would like to point out that this is a good example of a very useful function of lobbyists. You're helping this subcommittee come to a decision on a difficult bill before it.

I mentioned at the close of the last witnesses' testimony that I would appreciate a memorandum on a certain case and I extended that to reach ACLU. That's in effect, that is a request by somebody in the Congress for some information. So for one thing you won't be lobbying when you give me that. You made your points and as a matter of fact, you have made them before, and you refreshed our recollection a good deal. We are going to know you will be in attendance when we get to mark up which I hope won't be too far away, and you just bear with us and give us whatever information and help you can at that time.

And we are going to try to get a good bill out of this committee. I thank you very much.

Our next meeting is the 14th of March, which is next Wednesday, 10 a.m. in this room. We have people from the business community next week—church groups, environmental groups and the like. You can find out from our staff. We are having a little trouble juggling the witnesses around because I want to get this portion of the bill consideration behind us quickly so we can move into markup.

I thank you and wish you a happy week.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

WEDNESDAY, MARCH 14, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:04 a.m., in room 2226, of the Rayburn House Office Building; Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Harris, Hughes, Mazzoli, Moorhead, McClory, and Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer and Janet Potts, assistant counsel; Alan F. Coffey, associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 10 o'clock having arrived, and a quorum being present, we will proceed with further consideration of the bills relating to the subject of lobbying.

We are favored today with testimony from persons representing church groups, the Business Roundtable, and special interest groups.

First of all, I understand that one of our witnesses has a very difficult scheduling problem, so we are going to take the church group first; and we will call upon the Reverend Barry W. Lynn. If you are present, sir, please come forward.

He is with the United Church of Christ, Office for Church in Society.

Dr. Charles Bergstrom of the Lutheran Council, Office for Governmental Affairs in the USA is accompanying him.

I am going to point out, there will be one other group of persons who will have a somewhat different approach; they will be called very shortly.

Gentlemen, we have your statements, and without objection, they will be included in the record verbatim.

You are now free to present your case in any manner that you wish. I think you could throw away the notes and just speak from the heart and soul.

Dr. Lynn, you are first.

TESTIMONY OF THE REVEREND BARRY W. LYNN, ESQ., UNITED CHURCH OF CHRIST, OFFICE FOR CHURCH IN SOCIETY; ACCOMPANIED BY DR. CHARLES BERGSTROM, LUTHERAN COUNCIL, OFFICE FOR GOVERNMENTAL AFFAIRS IN THE USA

Reverend LYNN. Thank you very much for scheduling us early. I prefer that Mr. Bergstrom speak first.

Mr. DANIELSON. Very well.

Mr. BERGSTROM. Will our comments be included as a part of the record, Mr. Danielson?

Mr. DANIELSON. Yes, sir, that is already done.

Mr. BERGSTROM. I mean our spoken comments?

Mr. DANIELSON. Yes. We have a reporter here; we have a reporter and it is also being taped; so I just caution you that anything you say is going to be in the record. [Laughter.]

Mr. BERGSTROM. Since I have had an opportunity to read some of the previous testimony, I would like to make some introductory comments prior to just briefly reviewing a few of the things that are in the paper itself.

I would just like to say that I think we are here with the feeling that there is integrity to this process, and that not everyone has made up his mind about the issues simply because it has been before this committee a number of times before.

And I, as a fairly newcomer to this city, have a feeling there's almost two worlds when it comes to lobby disclosure bills: the world that is here each year in the review of this particular process; and the world which Reverend Lynn and I speak to in congregations of various parts of the United States.

We do not sense a strong feeling on the part of people demanding and asking for lobby disclosure legislation. In fact, one of the things that seems to be happening, and I think it's unfair to Congress, is the feeling that it's more like a surveillance and a regulatory-type of legislation; and that it can be more of a shelter for Congress than an opportunity for openness. And some have even called it a subsidy for Common Cause, because it's the type of work that they've done so well in the past.

But I would just like to re-raise the issue of the whole purpose, and ask you to consider that on the basis of our testimony today, that very much our feeling is that sometimes the material which would be received, it would be helpful, but it might come in too late, really, to help constituents; although it might be very valuable to the Members of Congress.

And how this would be used is a question that is raised many times in church groups.

Mr. DANIELSON. Let me interrupt:

You say the material may come in; what material may come in?

Mr. BERGSTROM. The material which reveals who is lobbying, and for whom, and the list of organizations that would be included in that.

Mr. DANIELSON. Speaking of the reports that would have to be filed?

Mr. BERGSTROM. That's right, to the Comptroller General.

Also, I don't want to feel defensive, but I don't think the churches are here for the areas of self-service; we are not really

interested in defending our particular prerogatives; but to try to keep openness to the sense of advocacy, which we feel is part of our position.

And I am not trying to speak for 9 million Lutherans, any more than anyone else can speak for all of their church groups.

But four of us today have been asked by the local religious organization called the Washington Interreligious Staff Council, to present some testimony which is at least representative of the united opposition of all of the church groups that work together in what we call WISC.

As far as my paper is concerned, I would just like to mention that in the presentation of this material, last year on very short notice, there were 22 signatures that were signed to some letters sent, I think, to this subcommittee, and also to the Senate committee that was considering lobby disclosure legislation.

And I have copies of those to submit for the record, if they would be helpful. That was with regard to last year's presentation.

[The submitted material follows:]

MATERIALS SUBMITTED WITH TESTIMONY OF CHARLES V. BERGSTROM OF THE LUTHERAN COUNCIL

1. Statement on Church and State Relationships.
2. Action by Lutheran Church in America opposing lobby disclosure legislation.
3. Letters to House members, Senate, and President Carter concerning 1978 lobby disclosure legislation.
4. Washington POST editorials.
5. Remarks by John W. Gardner, 1978.
6. Article by Charles M. Whelan.
7. Article by William B. Ball.

CHURCH AND STATE—A LUTHERAN PERSPECTIVE

(Adopted by the Third Biennial Convention, Kansas City, Mo., June 21-29, 1966)

The relations between church and state in the United States and Canada are profoundly affected by significant changes which have been emerging in recent years in the organization of society. For one thing, in the pluralistic structure of both nations all religions, and the various secularistic philosophies, are claiming and receiving equal status socially and before the law. Furthermore, there have been dramatic changes in education and welfare and in concepts of the role of national government in these fields. Consequently, religious bodies, through their agencies of education and social service, are being invited to participate more fully than ever before in publicly sponsored programs and in the acceptance of public financing.

These essentially new circumstances require the churches of the United States and Canada to state in terms which are contemporary and relevant the distinctive functions of church and state, areas of common concern, and the possibilities and boundaries of mutual co-operation.

In response to this situation the Lutheran Church in America affirms both institutional separation and functional interaction as the proper relationship between church and state. We hold that both church and state, in their varied organized expressions, are subject to the will and rule of God, who is sovereign over all things.

INSTITUTIONAL SEPARATION

By "institutional separation" we mean that church and state must each be free to perform its essential task under God. Thus we reject those theories of relationship which seek the dominance either of church over state or of state over church.

The one, holy, catholic, and apostolic church manifests itself in the world through organized communities of Christian believers. The church militant is both a divine organism related to Christ and a human organization related to society. Its distinctive mission as an ecclesiastical institutions is to proclaim the Word of God in preaching and sacraments, worship and evangelism, Christian education and social ministry.

"Civil authority," according to the New Testament, is divinely ordained. This does not imply that every particular government or governor enjoys God's approval; it means rather that "civil authority" which is manifested in the state is to be respected and obeyed as an expression of the sovereign will of the Creator.

This forbids any state from deifying itself, for its power is not inherent but is delegated to it by God to be employed responsibly for the attainment of beneficial secular goals. A government is accountable to God for the way in which it uses, abuses, or neglects to use its powerful civil "sword." The constant need of the state, therefore, is not for the church's uncritical loyalty and unquestioning obedience but for the prophetic guidance and judgment of the law of God, which the church is commanded to proclaim, in order to be reminded of both its secular limits and potentialities. The distinctive mission of the state is to establish civil justice through the maintenance of law and order, the protection of constitutional rights, and the promotion of the general welfare of the total citizenry.

FUNCTIONAL INTERACTION

"Functional interaction" describes a process which takes place in areas in which church and state, each in pursuit of its own proper objectives, are both legitimately engaged. We believe that such interaction is appropriate so long as institutional separation is preserved and neither church nor state seeks to use its type of involvement to dominate the other. We, therefore, reject theories of absolute separation of church and state which would deny practical expressions of functional interaction.

The church, solely through the free exercise of its divine mandate, relates to the interests of the state in such ways as (1) offering intercessory prayers on behalf of the state and its officials; (2) encouraging responsible citizenship and government service; (3) helping the state to understand and holding the state accountable to the sovereign law of God; (4) contributing to the civil consensus which supports the state in fulfillment of the duties of just government; and (5) championing the human and civil rights of all citizens.

The state, on the other hand, by fulfilling the duties of just government, relates to the interests of the church in such ways as (1) guaranteeing religious liberty for all; (2) acknowledging that the rights of man are not the creation of the state; (3) maintaining an attitude of "wholesome neutrality" toward church bodies in the context of the religious pluralism of our culture; (4) acting on a nonpreferential basis if providing incidental benefits in recognition of the church's civil services which also make a secular contribution to the community; and (5) acting on a nonpreferential basis if offering financial aid for educational or social services which church agencies render for the secular benefit of the community.

CONCLUSION

In summary, we affirm the sacredness of the secular life of God's people as they worship, witness, and work in his world. We advocate the institutional separation and functional interaction of church and state. This position rejects both the absolute separation of church and state and the domination of either one by the other, while seeking a mutually beneficial relationship in which each institution contributes to the common good by remaining true to its own nature and task.

This statement, addressed particularly to the situation of the church in the United States and Canada at the present time, is not intended to provide guidance with regard to all the issues arising from church-state relations. Its purpose, rather, is to set forth a basic theological stance within the context of which discussion may continue, policies may be formulated and specific actions may be taken.

Statement Opposing Lobby Disclosure

(Adopted by the delegates to the Ninth Biennial Convention of the Lutheran Church in America,[1] July 17, 1978 in Chicago, Ill.)

Whereas, the free exercise clause of the First Amendment as interpreted by the Supreme Court limits the power of government vis-a-vis religion, and

Whereas, HR 8494 (voted by the House of Representatives), and S 2971 substantially affect the free exercise of religion by including provisions which affect solicitation of funds and disclosure of contributors, and

Whereas, this legislation infringes on the right of church bodies to carry out their advocacy work on public issues related to our religious mission, and

[1]The Lutheran Church in America, with headquarters in New York, New York, has 2,900,000 U.S. members.

Whereas, the threats of government intrusions and criminal penalties discernible in such legislation would chill many legitimate and necessary efforts of education and advocacy, and

Whereas, many church and other charitable groups have performed responsible advocacy work on, for example, civil rights, questions of war and peace, etc., and

Whereas, we see no compelling government interest served by Senate Bill 2971 which is not now adequately covered by regulations which should be vigourously enforced,

Be it hereby resolved that the Lutheran Church in America assembled in convention in Chicago, Illinois express its opposition to pending lobby disclosure bill S 2971, and be it

Further resolved that we voice our support for the Office for Governmental Affairs of the Lutheran Council in the U.S.A. and other Washington-based advocacy offices in their stands against this legislation, and be it

Further resolved that we as individual citizens and through our Governmental Affairs Office communicate this action to our elected representatives and our president.

OFFICE OF GOVERNMENT LIAISON,
Washington, D.C., February 21, 1978.

Hon. PETER W. RODINO, JR.,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the United States Catholic Conference, the Synagogue Council of America and the National Council of Churches, we are writing you to express our concerns regarding H.R. 8494, a bill "to regulate lobbying and related activities."

While Congress may have the authority to require reasonable disclosure of lobbying activities, it also has the responsibility not to infringe upon First Amendment guarantees. As presently drafted, we believe that H.R. 8494 would permit, if not require, unwarranted infringement of First Amendment rights such as free speech, the right to petition government, privacy of association and belief, and the free exercise of religion.

We are particularly concerned about the chilling effect which the legislation, as presently drafted, would have upon the activities of charitable, religious and educational organizations, largely dependent upon private contributions and exempt from taxation under section 501(c)(3) of the Internal Revenue Code. Historically, voluntary associations of citizens in our nation have made substantial contributions of time and resources to help alleviate some of the problems in our society. The meshing of public and private voluntary efforts to meet the needs of society, if not unique to our nation, has certainly been an important part of our tradition. And integral to this tradition of cooperation has been the free exchange of information and ideas between the private, voluntary sector and public sector.

This flow of communication will be impeded, we believe, by the unreasonable record keeping and reporting requirements of H.R. 8494. These requirements would be both time consuming and expensive, and the costs for public charities could not be passed along by raising prices but would inevitably result in a lower level of program and service activity. Administrative costs, imposed by statute, become, in fact, fiscal restraints on the right to engage in constitutionally protected activity. While the proposed bill provides that the Comptroller General may not require an organization to maintain records other than those normally maintained, it also requires, under the constraint of criminal penalties, that an organization "shall maintain for each quarterly filing period such records as may be necessary to enable such organization to file the registrations and reports required."

Moreover, 501(c)(3) organizations are statutorily prohibited, as a condition of their tax exempt status, from engaging in more than "insubstantial" or carefully proscribed levels of lobbying activity already determined by the Congress. The fear, whether true or not, that they may jeopardize their tax exempt status by documenting their lobbying activities will inevitably "chill" their involvement in public policy debates, impede the flow of information which may well benefit the Congress in their deliberations and thereby impair their First Amendment rights.

While we are troubled about the possible abridgment of any First Amendment rights, and have addressed specific problems which we see facing all 501(c)(3) organizations, as religious organizations we must express our concern also about the possible impact of the proposed legislation upon the free exercise of religion. Speaking out on public issues can be, and for us is, part of the free exercise of religion protected by the First Amendment.

There has been judicial recognition of this element of religious freedom:

The step from acceptance by the believer to his seeking to influence others in the same direction is a perfectly natural one, and it is found in countless religious groups. The next step, equally natural, is to secure the sanction of organized society for or against outward practices thought to be essential. The advocacy of such regulation (prohibition) before party committees and legislative bodies is a part of the achievement of the desired result in a democracy. The safeguards against its undue extension lie in counterpressures by groups who think differently and the constitutional protection, applied by courts, to check that which interferes with freedom of religion for any. *Girard Trust Company* v. *Commissioner* 122 F. 2d 108, 110 (3rd Cir., 1941)

We believe that the impact upon churches and synagogues of the provisions of the proposed legislation would impair the free exercise of religion.

JAMES L. ROBINSON
(And 18 others).

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
New York, N.Y., July 13, 1978.

Hon. CHARLES McC. MATHIAS, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: We, the undersigned, ask your serious consideration of our deep concern for the advocacy work of religious and other voluntary organizations of our nation. Specifically, we are writing about S. 2971, the "lobby disclosure" bill, which we believe will seriously threaten our carrying out of the mission of voluntary citizens' groups and religious organizations.

Our difficulty with S. 2971 and similar bills stems from the effect they will have on the advocacy work of churches and other charitable, non-profit, and voluntary organizations. There are hundreds of groups interested in having their members exercise their constitutional rights of petition for which compliance with this legislation will mean a disastrous diversion of scant resources. There is a great deal of opposition to this legislation, including that of many religious organizations at the local, state, and national level.

There is a substantial question about the constitutionality of this bill, particularly insofar as it interferes with the free exercise of religion. The bill includes provisions which affect solicitation and require disclosure of some contributors. Much of our work is done through grass roots advocacy programs. The majority of our offices would come under the still low threshold of this proposal. Church and synagogue structures, and the structures and functions of other voluntary organizations across the nation vary considerably. It is still possible, even with a broader geographical exemption, that the legislation would affect some individual congregations and other local groups. Threats of government intrusion and criminal charges could chill many legitimate efforts at education. This then has the practical effect of enabling fewer people to get involved in the law-making process.

Many church and other charitable groups have performed positive advocacy work for civil rights and issues of peace and human justice. We would hope to continue this kind of work unencumbered by unreasonable disclosure legislation.

The long and confused debate in the House of Representatives over a similar proposal and the broken pattern of discussion in the Senate Governmental Affairs Committee may preclude consideration of the broad ramifications of "lobby disclosure". These bills occasionally look more like a new government surveillance mechanism than a substantive reform. We see no compelling government interest served by the legislation. Special favors, bribery, campaign financing, and payment of money are controlled by other statutes and regulations which should be vigorously enforced.

Newspapers and magazines are increasingly becoming alarmed by the way this legislation discourages small groups in their work. Several editorials of this nature have appeared in The Washington Post, for example. We urge you not to support S. 2971. In the midst of all the burdens that "lobbying" may present on the time of Congress, it is still one of the great opportunities for exchange of ideas between the people and their elected leaders.

As officials of religious organizations we openly claim the importance of advocacy with the Federal government as an integral part of our religious faith, guaranteed by the First Amendment. The lobby disclosure legislation clearly discourages this.

We would be very happy for an opportunity to discuss this with you personally.
Sincerely,

Mr. ROBERT ALPERN
(And 21 others).

UNITED CHURCH OF CHRIST,
OFFICE FOR CHURCH IN SOCIETY,
New York, N.Y., July 13, 1978.

President JIMMY CARTER,
The White House,
Washington, D.C.

DEAR PRESIDENT CARTER: We, the undersigned, ask your serious consideration of our deep concern for the advocacy work of religious and other voluntary organizations of our nation. Specifically, we are writing about legislation which we consider will seriously threaten our carrying out of the mission of voluntary citizens' groups and religious organizations.

You are aware that H.R. 8494 has been passed by the House of Representatives and that the Senate Committee on Governmental Affairs has held several meetings regarding S. 2971, another "lobby disclosure" bill. Our difficulty with these bills stems from the effect they will have on the advocacy work of churches and other charitable, non-profit, and voluntary organizations. There are hundreds of groups interested in having their members exercise their constitutional rights of petition for which compliance with this legislation will mean a disastrous diversion of scant resources. There is a great deal of opposition to this legislation, including most church groups and your own denomination, the Southern Baptist Convention.

There is a substantial question about the constitutionality of these bills, particularly insofar as they interfere with the free exercise of religion. Both bills include provisions which affect solicitation and require disclosure of some contributors. Much of our work is done through grass roots advocacy programs. The majority of our offices would come under the very low thresholds of these bills. Church and synagogue structures, and the structures of other voluntary organizations across the nation vary considerably. It is possible that the legislation would even affect some individual congregations and other local groups. Threats of government intrusion and criminal charges could chill many legitimate efforts at education. This then has the practical effect of enabling fewer people to get involved in the law-making process.

Many church and other charitable groups have performed positive advocacy work for civil rights, questions of peace and, very specifically, ratification of the Panama Canal treaties. We would hope to continue this kind of work unencumbered by unreasonable disclosure legislation.

The long and confused debate in the House of Representatives and the broken pattern of discussion in the Senate Governmental Affairs Committee evidence a lack of consideration for the broad ramifications of "lobby disclosure". The bills occasionally look more like a new government surveillance mechanism than a substantive reform. We see no compelling government interest served by the legislation. Special favors, bribery, campaign financing, and payments of money are controlled by other statutes and regulations which should be vigorously enforced.

Newspapers and magazines are increasingly becoming alarmed by the way this legislation discourages small groups in their work. Several editorials of this nature have appeared in The Washington Post, for example. We urge you to rescind your support for S. 2971. In the midst of all the burdens that "lobbying" may present on the time of Congress, it is still one of the great opportunities for exchange of ideas between the people and their elected leaders.

As officials of religious organizations we openly claim the importance of advocacy with the Federal government as an integral part of our religious faith, guaranteed by the First Amendment. The lobby disclosure legislation clearly discourages this.

We would be very happy for an opportunity to discuss this with you personally.
Sincerely,

Mr. ROBERT ALPERN
(And 21 others).

[From the Washington Post, Mar. 8, 1979]

LIBERTY FOR LOBBIES

"Casting more light on lobbying" sounds like a fine good-government goal. But it's the kind of formulation that members of Congress should be wary of as they try once more to rewrite the lobby-disclosure law. This is one of the fields in which openness—meaning broad, detailed, compulsory disclosure—is not at all synonymous with free, healthy political activity. Congress cannot push lobby-reporting

laws very far without intruding on realms of private association and expression that are beyond the proper reach of government.

A good example is the burgeoning field of so-called grass-roots or indirect lobbying—attempts to influence senators and representatives by stirring up mail, phone calls and visits from people back home. Such campaigns have become so commonplace that lawmakers are constantly being bombarded from many sides. They find it quite discomfiting. They are not always sure how much real political force a barrage of postcards represents. And the recent surge in sophisticated grass-roots campaigns by business and single-issue groups has fed suspicions that lobbies with large bankrolls and extensive mailing lists are gaining undue influence on Capitol Hill.

Should groups that organize indirect lobbying have to report on their financing and activities? That would certainly help citizens and officials find out who is behind these campaigns. But consider what such a sweeping law would mean. Every active group with legislative concerns—including trade associations, unions, universities, charitable societies and citizens' groups—would have to report to a federal agency on its meetings, mailings, advertisements and other issue-oriented activities. Anyone suspected of non-compliance would be subject to federal audits, investigations and penalties.

Talk about overregulation! The paperwork would be incredible. Much more ominous is the whole idea that private groups should be compelled to report on perfectly legitimate communications with their own members, supporters and the public at large. The chief advocates of full disclosure say they don't want to interfere with any group. Last year's House debate suggested, however, that some congressmen do see disclosure as a way of embarrassing or burdening interest groups whose lobbying they find bothersome.

So far, enough lawmakers have recognized these and other problems so that no overreaching bill has gotten through. A House judiciary subcommittee is now tackling the subject again. The White House has been seeking compromises, but a coalition of interest groups—ranging across the spectrum from business associations to the Sierra Club—is insisting on a carefully limited bill. Their position may sound self-serving, but it really serves the national interest in free discussion of public affairs.

[From the Washington Post, May 12, 1978]

Lobbies, Letters and the Law

Under the banner of lobby disclosure, some sweeping and meddlesome legislation is being advanced on Capitol Hill. The House recently passed a bill requiring most groups that pay lobbyists to file quarterly spending reports on both their Capitol Hill activities and so-called indirect lobbying—efforts to influence Congress by stirring up letters, calls and visits from people back home. A bill sponsored by Sens. Abraham Ribicoff (D-Conn.), Edward M. Kennedy (D-Mass.) and others, and now before the Senate Governmental Affairs Committee, would require even more detailed reports. Moreover, the Senate bill would compel any corporation, union, church or other group to register with the government and open its records to federal inspection if it spends $5,000 or more on advertisements, mailings or other efforts to get people to contact Congress about anything—even if the group itself never gets directly in touch with lawmakers at all.

Such provisions go much too far into realms of citizen activity that have traditionally been beyond the proper reach of government. Of course, when citizens form organizations, communicate about issues and petition Congress, they are engaging in public or political activities. But that is precisely why the First Amendment makes such activities exempt from public—i.e., governmental—interference or control.

To justify compulsory disclosure about grass-roots lobbying, one would have to make a massive record of corruption or abuse. In our view, that case has not been made. It's not enough that organized issue-oriented lobbying campaigns have grown immensely sophisticated, expensive and numerous. That does not make such activities less legitimate. A letter to a senator favoring, say, an ethics bill is not necessarily less sincere or personal because it was prompted by some group's appeal. Moreover, such stimuli are usually no secret. Few attempts to influence Congress are more public than a newspaper ad. Campaigns to drum up mail are usually easy to identify; indeed, many groups brag about how many postcards or phone calls they can generate overnight.

It's true that life would be much easier for legislators, journalists and competing interest groups if such lobbying had to be reported. But compulsion brings interference, almost inevitably. We're not thinking just of the burdens and costs that reporting rules impose, though they could deter some smaller groups. Beyond that,

(there were indications in the House debate that some lawmakers regard disclosure laws as ways to punish, inhibit or embarrass various lobbyists with whom they disagree. Such sentiments lead right down the slippery slope toward impermissible interference with citizens' liberties.)

In calmer times, more members of Congress would probably recognize these dangers and back away from such intrusive bills. But Congress these days is under strain, largely because lobbying of all kinds has gotten so extensive and intense. The lawmakers are bombarded by mail and besieged by professional advocates with various concerns. They aren't sure how much general sentiment those forces represent, how politics may be changing or how to turn down the heat. In this climate, the lobby-disclosure bills may seem attractive not so much to inform the public as to help legislators themselves figure out what is going on. But those political questions cannot be answered by demanding financial reports from virtually every active association of citizens in the land. It would be better for incumbents to learn more about their constituents' opinions by spending more time at home. And if they think some interest groups are getting too insistent, they could tell those groups to back off, or reject their demands.

[From the Washington Post, Apr. 19, 1978]

Spotlights on Lobbying

How much should groups that lobby Congress have to tell about their activities? That question is scheduled to come before the House today. It's easy to argue for extensive disclosure on the ground that citizens ought to know how various groups are trying to influence national policy. At some point, though, reporting rules run into fundamental principles such as freedom of speech, freedom of association and the right to petition government.

In our view, the House Judiciary Committee has come out at about the right place. The bill coming before the House, H.R. 8494, would require quarterly spending reports from most organizations that lobby in the traditional way, by paying agents or employees to contact members of Congress, their staffs or executive branch officials about matters on Capitol Hill. The rules would not cover groups' dealings with their own senators or representative, or people who lobby as individuals or volunteers.

Some think H.R. 8494 falls short by failing to make lobbying groups disclose the sources of their funds. Granted, it is useful to know whether something called, let's say, the Committee for Tax Reform is financed by angry home-renters or by an industry with millions to gain from a small change in the code. But that hardly justifies requiring every group that lobbies to list all its contributors or even the major ones. Reports on the nature of each group's principal backers would be informative enough, while intruding far less on First Amendment grounds.

The largest controversy involves so-called indirect lobbying, the popular technique of putting pressure on lawmakers by using advertising, mass mailings, phone networks and the like to drum up visits, letters and calls from people back home. Business groups have been using those methods heavily and with considerable success, as in the House defeat of the consumer agency bill. Thus many Democrats, especially, think such campaigns ought to be disclosed.

The Judiciary Committee, however, decided to keep H.R. 8494 out of this area—and we think the committee is absolutely right. Disclosure rules would sweep across the spectrum of civic, social, economic and political associations in the land. Such rules would create an immense potential for official interference with lawful, voluntary activities. Surely the First Amendment guarantees that citizens and groups may communicate with one other about public issues without registering with the government or filing quarterly reports on their efforts and finances.

(Given all the problems involved, we wonder why some lawmakers—including many staunch champions of grass-roots activity—want to push laws into this field at all.) One reason may be that they have not learned to cope with the barrages of mail and calls from prominent constituents, which lobbying campaigns can produce. They may not always know who is turning on the heat, or how much political weight to give the post cards generated by an ad. And they may fear that high-pressure lobbying is distorting congressional decisions or overwhelming other points of view. But laws can't really solve those problems. A better course would be for lawmakers to discount the lobbyists and spend more time back home learning what voters really care about.

[From The Washington Post, Sept. 10, 1977]

How Much Light on Lobbies?

One bit of unfinished congressional business is rewriting the law governing public disclosure by lobbyists. The public now knows far too little about the efforts and finances of thousands of organizations that jockey for influence on Capitol Hill. But how much should a lobbying group have to disclose? Reports should certainly include some basic facts—the bills or issues that each group is interested in, the names of employees or agents who lobby, how much they are paid, and other expenditures, including gifts to legislators and their staffs. Beyond that, though, the principle of disclosure starts running into other principles vital to a healthy democracy.

We are not primarily concerned about the possibility that detailed reporting would be too burdensome for smaller lobbying groups. What troubles us more is the potential for official intrusion on areas of citizens' activity traditionally regarded as largely, if not wholly, beyond the reach of government. One example would be requiring membership organizations to disclose the names of individual contributors.

Then there is the matter of indirect or grass-roots lobbying, the popular and often effective means of putting pressure on lawmakers by generating letters or calls from constituents and other citizens. Of course it would be interesting to know who is behind such organized, skillful campaigns. But should a veterans' lobby have to file a report on every newsletter that urges its members to write to Congress about a bill? Should a corporation with a paid lobbyist have to report an interoffice memo that asks its employees to sign petitions for tax changes or import controls? A bill sponsored by Sen. Edward M. Kennedy (D-Mass.) and others would require such disclosures.

A measure before the House Judiciary Committee would exempt regular publications, such as union newspapers or corporate quarterly reports, that incidentally advocate contacts with Congress about bills. But the House bill would still require lobbying groups to file a full description or a copy of every ad or special bulletin encouraging citizens' appeals to the Senate or House.

This is disclosure run amok. The government would be collecting mountains of material from thousands of private groups across the whole spectrum of civic, economic, social and political activity. These groups would have to report more about their efforts to petition Congress than political candidates have to disclose about the substance of their campaigns. Candidates do not have to file copies of their ads or mailings with the government. For that matter, senators and representatives do not have to report on their own efforts to drum up support for various programs and policies. Any proposals along those lines would rightly raise a mighty fuss about interference with First Amendment rights. Yet mandatory disclosure of private groups' communications involves precisely the same dangers. Free discussion of public issues could be inhibited.

Thus the risks involved in this kind of disclosure seem to us to outweigh any gains in terms of public understanding of the workings of government. Organizations' appeals to supporters, after all, are just one aspect of the complex process of shaping public opinion and policies. What prompts a citizen to write a senator may matter less than how fervent that citizen's opinion is and how much it will influence his vote in the next election. No lobby-reporting law can throw much light on that. All in all, we think Rep. Don Edwards (D-Calif.), Sens. Charles McC. Mathias Jr. (R-Md.) and Edmund S. Muskie (D-Maine) and the American Civil Liberties Union are on a better track. They advocate disclosure of the basic facts about lobbyists' Capitol Hill activities—but would leave grassroots communications alone.

[From the Washington Post, July 26, 1978]

Lobby Disclosure—Again

"LOBBY DISCLOSURE" is a deceptive term. It sounds like a splendid good-government cause, but it can easily involve all sorts of undesirable—and probably unconstitutional—interference with citizens' rights to organize, communicate on issues and petition Congress. The House largely ignored those problems when it passed a sweeping lobby-disclosure bill this spring. The Senate Governmental Affairs Committee showed more sense and sensitivity when it suspended work on the subject in May. Today, however, committee chairman Abraham Ribicoff (D-Conn.) plans to bring the matter up again, in part because the Carter administration wants the Senate to act this year.

There would be merit in a lobbying-registration bill that confined itself to requiring better reports from people paid to lobby Congress in the traditional way,

through direct contacts with lawmakers and their staffs. The bills favored by Sen. Ribicoff and the administration, however, reach far beyond that to encompass so-called indirect or grass-roots lobbying that involves trying to influence Congress by running advertisements or generating calls, mail and visits from people back home.

There is no question that this form of issue-oriented campaigning has become effective and intense. There is also no question, so far as we know, that it is perfectly legitimate. The advocates of extensive disclosure may point to the recent Senate fights over labor-law changes and the Panama Canal treaties as examples of how expensive and overwhelming grass-roots efforts have become. But that experience also shows, we think, that legislators, journalists and interested groups can easily find out a lot about the scope and sponsorship of various letter-writing and senator-visiting campaigns—without imposing intrusive, burdensome reporting rules on virtually every union, company and citizens' group engaged in public affairs.

Sens. Edmund Muskie (D-Maine) and Charles Mathias Jr. (R-Md.) are leading the fight to keep any lobby-reporting bill within sensible bounds. In May they seemed to have considerable committee support. We hope that, this time around, even more senators will recognize the dangerous potential for stifling free political activity, and put the sweeping bills back on the shelf.

Remarks by John W. Gardner

I am engaged in a task sponsored by the National Council on Philanthropy and the Coalition of National Voluntary Organizations. They have created a common staff and office, under the direction of Brian O'Connell, and it is their hope that this will lead to a new organization encompassing virtually the whole nonprofit segment of the private sector—the social agencies, independent colleges, cultural groups, public interest groups, foundations, scientific laboratories and so on. To explore the possibility of such an organization, they have created an Organizing Committee.

I accepted the chairmanship of that committee because I was impressed with the farsighted thinking and statesmanship of Kenneth Albrecht, Bayard Ewing and other representatives of the two organizations. NCOP and CONVO represent very broad constituencies in the nonprofit sector. Among the many organizations that are already members of either NCOP or CONVO are the American Public Welfare Association, The National Council on Voluntary Action, the Council on Foundations, The Urban League, the Alliance for Volunteerism, the Women's Action Alliance, the American Arts Alliance, the National Assembly of Voluntary Health and Social Welfare Organizations and the United Way.

Ever since colonial days, foreign visitors have commented on the extraordinary impulse of Americans to form voluntary groups and invent nongovernmental institutions to serve community purposes. Out of that impulse has come an incredible variety of American institutions—libraries, museums, civic organizations, great universities, the United Way, the Salvation Army, symphony orchestras, garden clubs, historical societies, adoption services, hospitals, religious organizations, Alcoholics Anonymous, the 4-H Clubs, and so on. The groups and organizations number in the millions. Taken all together, they constitute a vitally important part of American life. In 1973, the Center for a Voluntary Society estimated that 70 million Americans made some significant non-monetary contribution to these institutions. Neither business nor government, they are referred to by a variety of names—the voluntary sector, the third sector, the nonprofit sector and so on. I am going to use the terms nonprofit sector or independent sector.

Americans have always believed in pluralism—the idea that a free nation should—within the law—be hospitable to many sources of initiative, many kinds of institutions, many conflicting beliefs, many competing economic units. Pluralism values diversity. It allows individuals and groups to pursue goals that they themselves formulate. Out of that pluralism has come virtually all of our creativity. Our nongovernmental, nonprofit organizations are a major feature of that pluralism, and most Americans would assume that, as such, they are an indestructible part of American life. But they are in trouble.

First, private giving has eroded. I shall not burden you with the statistics, but they are available. At the same time, expectations for service have risen greatly and operating costs have escalated. As a result a high proportion of nonprofit institutions are in serious financial trouble.

Meanwhile, we have seen tremendous growth in the size and services of government; and government money is flowing ever more heavily into nongovernmental nonprofit organizations. For example, one thinks of the agencies supported by the United Way as private agencies, yet the federal money going to those agencies now averages 25 percent of their budgets. And with the federal money comes the federal rulebook. Never before have private sector agencies been more plagued by governmental regulations.

This poses the familiar conflict between the government's requirement of accountability and the private institution's requirement of independence. As long as private institutions have multiple sources of support, as long as the federal money is only one among several sources, independence is a possibility. But even with modest federal funding, we're going to have to work toward arrangements that reconcile independence and accountability. Otherwise, private sector institutions will all eventually become arms of the federal government.

The Organizing Committee is authorized to look at all parts of the nonprofit segment. The new organization we are discussing would not officially represent, or coordinate, or provide a channel for the activities and institutions of the nonprofit segment. Nongovernmental, nonprofit organizations are independent and intend to remain so. The enormous variety, freedom, creativity and pluralism of the nonprofit world is not to be tampered with. Indeed, it is still an open question whether any one organization can serve such a heterogeneous set of institutions.

Given the fact that the Organizing Committee has held only one meeting, it is impossible to say much about the proposed new organization. But it is not impossible to list some challenges and opportunities that will face any group operating in this field.

1. There is a need for research to provide a body of knowledge about the independent sector.

2. It is essential to improve public understanding of the sector, clarifying its role and function in American life.

3. It would be desirable to provide a meeting ground and means of communication within the sector, so that shared problems may be identified and discussed. It would obviously be impossible—and if possible, undesirable—to impose a common set of values on the independent sector. We must protect the right of new groups to develop even if they turn out to be our reformers.

4. It is important to establish two-way communication with the various levels of government. We must work toward relations between government and the nonprofit segment of the private sector that will reconcile—insofar as possible—the conflict between accountability and independence. The tension between the two principles will never be resolved, but an accomodation is possible—and essential.

5. If private nonprofit institutions are to survive and retain their vitality, they must manage themselves well and serve community needs honestly and responsibly. It is important, for example, that funding organizations be accessible and accountable. Unfortunately, some nonprofit institutions have decayed, some are so poorly managed that they waste the money entrusted to them, and some no longer serve significant needs. It is essential to foster a spirit and tradition of self-appraisal and continuous renewal.

6. At the most basic level, the central task of the new organization would be to ensure the survival of the nonprofit sector as a vital element in American life, strengthening the tradition of voluntary activity, of independence, of private giving.

One of the critically important problems shared by all institutions of the independent sector is the question of tax policy.

When all kinds of people are left free to pursue all kinds of activities, a surprising number of them choose to serve some community purpose. And the American tradition has encouraged that. The private pursuit of public purpose is an honored tradition in American life. We do not regard the furtherance of public purpose as a monopoly of government. And that belief has released incredible human energy and commitment in behalf of the community.

But given the apparently bottomless reservoir of human commitment, one then needs another and more earthy ingredient—money. So it turns out that all of these nonprofit sector activities depend on another powerful American tradition—the tradition of private giving for public purposes. The ingredient of private giving supplies the element of freedom. It is remarkable that so many Americans give of their own volition to institutions or organizations that seem to them worthy. They give roughly $30 billion a year and contribute God knows how many billion more in volunteered non-monetary services. About 80% of individual giving comes from families with incomes of less than $20,000 a year.

Government tax policy until recently has deliberately fostered that tradition. The tax deductibility of charitable gifts is a long-established policy designed to further an authentically American idea—that it is a positively good and important thing in American life for a great many people, quite independently, in their capacity as private citizens, to contribute to charitable, religious, scientific and educational activities of their choice. And we have demonstrated that preserving a role for the private citizen in these matters encourages creativity, and keeps alive in individual citizens the sense of personal caring and concern so essential if a mass society is to retain the element of humaneness.

The area of our national life encompassed by the deduction for religious, scientific, educational and charitable organizations lies at the very heart of our intellectual and spiritual strivings as a people, at the very heart of our feeling about one another and about our joint life. And traditionally, government leaders have agreed that here if anywhere government should keep its distance, and the maximum degree of independence should be honored; here if anywhere the personal, family and community spirit should be preserved; here if anywhere those elements of the human mind and spirit that wither under bureaucratization should have a place to stand free.

And this positive policy has worked. It has permitted the emergence of great world centers of learning, it has made our museums and medical centers famous throughout the world. And it has nourished an enormous variety of neighborhood and community activities.

Have there been abuses? Of course. But they have been trivial compared to the great and lasting benefits in preserving our free society.

On many occasions I have expressed my abhorrence of those tax policy views which reflect no understanding of the value and significance of the nongovernmental, nonprofit sector of our society. So I won't repeat myself here.

Surely no substantial element in the private sector wants our tradition of voluntarism and private giving to die. And most government servants don't want that outcome either. All elements in the private sector should unite to maintain a tax policy that preserves our pluralism.

Tax policy is not the only point at which government's relations with the nonprofit sector are coming in for apprehensive scrutiny. Twenty-five years ago one would have been hard put to find a college or university that had any serious worries about the federal government. Today, every college and university is worried. So is every social agency. And every foundation.

One obvious reason is that with federal money comes the federal rule book. Sometimes the regulations themselves are the source of the trouble. They must of necessity be uniform for the whole nation, leaving no room for the special needs or circumstances of a particular institution. And they are often written with a degree of detail that is wholly unrealistic, prescribing specific procedures without room for flexibility to meet local conditions. Sometimes the regulations are less to blame than the manner in which they are administered by literal-minded bureaucrats who show little regard for the dislocations produced locally by a rule written thousands of miles from its point of application.

A root disease of bureaucracy is the tendency to centralization. In a well-designed government, there should be a wise, a fitting allocation of functions between the center and the periphery. Those functions that can best be performed at the highest level of government should be performed there, while those best performed in the private sector—or by local government—should be decentralized. But top officials, living at a dizzying altitude where delusions easily develop, fall into the error of thinking that everything can be designed, programmed and solved from the peak on which they sit. It doesn't work.

We must stop thinking in terms of solutions concocted in Washington and imposed on every locality. There is no way for the vast Executive Branch of the federal government to think about Peoria as a community. It can think about the health or education or housing requirements of the nation, broadly conceived. But how all of those needs relate to one another, how they exist in the context of a living, breathing community, how one deals with them in terms of local tradition, local resources, local motivations—all of that is simply beyond the reach of Washington. There's no spot in the Executive Branch that can effectively answer those questions, nor should there be such a spot. The place to think about Peoria as a community is Peoria. That's where local tradition feeds present action and future goals. That's where the intricately woven patterns of a community may be taken into account in shaping programs. This is not to say that there should not be national programs and objectives that include Peoria. It is simply to say that we want it all to work, we're going to have to get Peoria into the act as other than a passive recipient.

The nonprofit sector has a vital role to play in all of this, and it is unwise of the federal government to do anything to diminish that role.

It would be inappropriate, despite the tension and conflict reflected in the above paragraphs, to fall into viewing government's dealings with the nonprofit sector as an adversary relationship. It's a question of creating procedures and arrangements that will effectuate a workable partnership. There are no villains. Government is necessary to the nonprofit sector; and a vital, creative nonprofit sector is crucial to the nation's future.

At a time in history when we are ever in need of new solutions to new problems, the private sector is remarkably free to innovate, create, and engage in controver-

sial experiments. In fact, virtually every far-reaching social change in our history has come up in the private sector: the abolition of slavery, the reforms of populism, child labor laws, the vote for women, civil rights, and so on.

In the private sector, ideas for doing things a different (and possibly better) way spring up by the millions. If they do not fill a need, they quickly fall by the wayside. What remains are the few ideas and innovations that have survival value. The winnowing goes on continuously. New ideas and new ways of doing things test the validity of accepted practice and build an inventory of possible alternative solutions to be used if circumstances change. Government bureaucracies are simply not constructed to permit the emergence of new ideas, and even less to the winnowing out of bad ideas.

Thanks to the institutions of the nonprofit sector, not only can citizens participate in the concerns of American life, they can do so at the grassroots level—and in doing so contribute importantly to the preservation of vital communities. There is in grassroots community activity the opportunity for sympathetic personal attention to human problems.

Crucial to the metabolism of a healthy private sector are groups and patterns of social interaction that rarely occupy space on the front page—the family, religious congregations, coherent neighborhoods, social groups that still preserve a "sense of community", in short, all the "intermediary" groups that authoritarian societies generally try to abolish because, as repositories of local tradition and loyalty, they make it harder for the state to achieve direct and total dominion over the individual.

We must at all costs preserve those life-giving features of the private sector. When it comes to helping relationships, one of the most pervasive and powerful forces is the web of personal, familial and neighborly relations that aren't even formalized to the point of meriting the term "association". A good many recent studies of family and personal crises have underscored the enormous significance of this informal "support system".

The past century has seen a more or less steady deterioration of American communities as coherent entities with the morale and binding values that hold people together. Our sense of community has been badly battered, and every social philosopher emphasizes the need to restore it. And the individual must take part in that rebuilding. What is at stake is the individual's sense of responsibility for something beyond the self. A spirit of concern and caring for one's fellow beings is virtually impossible to sustain in a vast, impersonal, featureless society.

All experience shows that our shared values survive best in coherent human groupings (the family, the neighborhood, the community). We must recreate a society that has its social and spiritual roots firmly planted in such groupings—so firmly planted that those roots cannot be ripped out by the winds of change, nor by the dehumanizing, automatizing forces of the contemporary world.

This is not to express a sentimental aversion to large-scale or national action. Many of the forces acting upon us can only be dealt with by large-scale organizations, national in scope, including a vigorous government. But if we intend that the overarching governmental organizations we create be our servants and not our masters, we must have vital communities. The institutions of the nonprofit sector are essential to that objective.

It isn't easy to describe the nonprofit sector because it's made up of so many unrelated, unofficial, unclassifiable activities. But that's one of the very qualities that makes it beautiful. It isn't a describable thing. Its variety is infinite. It's the arena in which freedom survives and flourishes. Let's keep it that way.

[From America, Dec. 16, 1978]

Government and the Church

(By Charles M. Whelan)[1]

In recent years, civil authorities have tried to clarify the stance of religious persons and organizations with regard to taxation, regulations and exemptions. Some religious leaders are afraid of the trend

During the last 10 years, American church leaders have become increasingly concerned about governmental definitions and regulations of churches and religious activities. A small but growing number of religious leaders of all faiths fear that the golden age of religious exemptions has ended. They believe that we are already in the twilight of substantially increased governmental regulation. They are convinced

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that there is a real danger—unless the churches manfully resist—that we will soon enter the night where religious exemptions will be the rare gleam instead of the bright rule in American law.

This fearful forecast is more than a little exaggerated. But I emphatically agree that there is real cause for concern about some of the legal developments of the last 10 years. Many of these developments have not caused any serious detriment to religious liberty. A few, however, contain the seeds of dangerous friction between church and state. The time has come to assess what has happened, and to seek ways of preserving the mutual respect that has traditionally existed between the churches and the state and Federal governments.

The first step in this process of assessment must be an exact description of the nature, the causes and the effects of the legal developments of the last 10 years. Without accurate information, correct evaluation is impossible.

The second step should be serious reflection on when it is proper for the Government to make religious classifications and grant religious exemptions. Church and state are separate, but they coexist and co-function in human society. At least some general criteria should be established for judging which classifications and exemptions are beneficial, which detrimental and which a matter of indifference.

The third step will be the application of these criteria to the particular developments of the last 10 years. The fourth and final step will be to devise remedies for those developments that have been, or threaten to become, truly detrimental to religious freedom and the harmonious coexistence of church and state in American society.

This four-step process will require considerable, but not monumental, work. It would be extremely desirable that the work be carried on by an ecumenical study group, as suggested by Cardinal Terence Cooke of New York at the November meeting of the Roman Catholic hierarchy.

In this article, I shall discuss each of the four steps. I shall not try to be comprehensive, but will point out matters that should be considered in each phase of the process of reviewing and evaluating the legal developments in American church-state relationships during the last 10 years.

I.

The first major changes occurred in the Tax Reform Act of 1969. During the hearings prior to that legislation, an extraordinary, unprecedented event took place. Two major church organizations asked Congress to take away part of their tax exemption.

The organizations were the United States Catholic Conference and the National Council of the Churches of Christ in the United States. They asked Congress to repeal the exemption of churches from the tax on unrelated business income. It was the first time in American history that any exempt organization sought repeal from the Government of part of its tax exemption.

Congress granted this request. But in this same Tax Reform Act, Congress did something else that these organizations did not ask Congress to do—indeed, something that these organizations asked Congress not to do.

Before 1969, no religious organization and no religiously affiliated organization had to file an annual financial report with the Internal Revenue Service. In 1969, Congress repealed this blanket exemption and substituted a more limited exemption: an exemption for churches, conventions and associations of churches, their integrated auxiliaries and the exclusively religious activities of religious orders.

Some of these categories antedate 1969. But the Tax Reform Act of that year greatly increased the legal consequences of belonging to one category or another. It is not just a matter of filing financial reports. Other sections of the Code make these categories important for public charity status, entitlement to exempt treatment and the deductibility of charitable contributions.

In the Tax Reform Act of 1969, Congress did not define any of these categories of religious institutions. Congress left the task of definition to the Department of the Treasury and to the Internal Revenue Service. These agencies have subsequently promulgated regulations and rulings that explain the new categories in ways that are unacceptable to almost all concerned American religious leaders.

The regulations and rulings exclude the charitable, educational, health and welfare agencies of the churches from the categories of "churches" and "conventions or associations of churches." The regulations and rulings also exclude these agencies from the categories of "integrated auxiliaries of churches" and of "exclusively religious activities" of religious orders.

The churches find these regulations and rulings extremely offensive. The churches consider their schools, hospitals and other charitable and welfare organizations to be integral parts of the churches: just as integral as the houses of worship,

the seminaries and the central administrative organizations. The churches object vehemently to the Government's dissection of the churches and classification of the components as more or less "church" or "religious."

Other legislation since 1969 has also added to the complexity of religious classifications and exemptions in American law. In 1972, Congress amended the religious exemptions in Title VII of the Civil Rights Act of 1964. Title VII generally prohibits discrimination in employment on the basis of race, color, religion, sex or national origin.

As a result of the 1972 amendments, there are now three kinds of religious exemptions from this general prohibition of discrimination in employment.

The first kind of exemption is the "bona fide occupational qualification" exemption (B.F.O.Q., for short). This exemption is available to any employer who can show that a particular religious characteristic is a B.F.O.Q. for a particular job. Thus, a hospital seeking to employ a Jewish chaplain can insist that an applicant for the job be Jewish. The B.F.O.Q. exemption also permits discrimination on the basis of sex or national origin, but not discrimination on the basis of race or color.

The second kind of exemption is limited to religious discrimination. This exemption is available only to two kinds of educational institutions: those whose curriculum is directed "toward the propagation of a particular religion," and those that are wholly or substantially "owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society."

These educational institutions may, if they wish, require all their employees to be members of the church with which the educational institution is connected. These institutions, however, may not discriminate in employment on the basis of race, color, sex or national origin.

The third kind of exemption is a total exemption from the prohibitions of Title VII. Before 1972, all churches and all educational institutions enjoyed this kind of exemption. Since 1972, only religious corporations, associations and societies and "religious educational institutions" enjoy total exemption from Title VII.

It thus makes a great deal of difference whether a particular educational institution is so closely connected with a church that the school qualifies as a "religious educational institution," or is connected only in one or more of the ways mentioned in the second kind of exemption (total or substantial support, control or management, or direction of the curriculum toward propagation of a particular religion).

Exactly what Congress had in mind in drawing the subtle distinction between "religious educational institutions" and other types of church-related schools remains a mystery. But the legal consequences are clear: "Religious educational institutions" do not have to comply with Title VII at all. Other church-related educational institutions are subject to * * * against religious discrimination.

It is very likely that the courts will find a considerable overlap between the second and third kinds of religious exemptions in Title VII. In the meantime, however, Government agencies like the Equal Employment Opportunity Commission have to deal with the religious distinctions that Congress has made. The legal presumption is that there is no overlap, so the agencies try to find some reasonable distinctions between the second and third kinds of religious exemptions.

In 1974, Congress amended the unemployment tax and brought "schools" within its coverage. Congress, however, left standing the exemption for organizations "operated primarily for religious purposes and . . . operated, supervised, controlled or principally supported by a church or convention or association of churches."

The legislative history of this amendment does not clearly disclose whether Congress intended parochial schools to be taxable because they are schools, or nontaxable because they are parochial. The Department of Labor has taken the position that Congress intended the schools to be taxable (with respect to lay teachers) because they are schools.

In 1974, Congress also enacted the Employee Retirement Income Security Act (ERISA), known more popularly as the Pension Reform Act. Congress exempted churches altogether from the act, and church agencies until Dec. 31, 1982. But to be exempt as a "church plan," the plan must cover only "church"—not "church agency"—employees after Dec. 31, 1982. The statute does not define "church" or "church agency," so Treasury and the Internal Revenue Service must deal with the distinction as best they can. Congress, of course, still has time to clarify the distinction before it becomes effective in 1983.

In the last couple of years, the National Labor Relations Board has decided to exercise jurisdiction over labor-management relations in Catholic school systems. A challenge to the legality of this decision is currently awaiting resolution by the Supreme Court.

There are no religious exemptions in the text of the National Labor Relations Act. Until recently, however, the N.L.R.B. had declined to exercise jurisdiction over

church-related schools. Then, N.L.R.B. decided to make a distinction between "wholly religious" church-related schools and those that are not. The N.L.R.B. does not deny that Catholic schools have a religious dimension, but argues that they are not religious enough to escape N.L.R.B. jurisdiction.

This list of statutes, regulations and agency actions making religious distinctions could be expanded to enormous length. Justice William O. Douglas once complained bitterly that religious distinctions (especially exemptions) were rife in American law. He was wrong about their constitutionality, but he was right about their number.

II.

The desirability of all these religious classifications and exemptions in American law is not immediately self-evident. American churches need to think seriously about when and how it is proper for government to make such classifications and exemptions. It should be possible to develop at least some general criteria for good and bad classifications and exemptions.

One preliminary question concerns the right of government to make any religious classifications or exemptions at all. The answer to this question requires an understanding both of constitutional law and of the religious rights of the churches to define themselves.

The U.S. Constitution explicitly mentions religion twice: once in the First Amendment and once in Article VI. Congress has no authority to enact any laws "respecting an establishment of religion, or prohibiting the free exercise thereof." No "religious test" can ever be required as a qualification for Federal office. The words "religion" and "religious" also occur in all the state constitutions at least once or twice.

The U.S. Supreme Court, and the highest courts of the states, have consistently interpreted these constitutional provisions as creating three categories of religious exemptions: the mandatory, the permissible and the forbidden.

The exemption of the Amish from compulsory high school education is an example of a constitutionally mandated exemption. The inclusion of churches in property tax exemptions is an example of a constitutionally permissible, or discretionary, exemption. And a special income tax deduction solely for tuition paid to a nonpublic elementary or secondary school is an example of an exemption that has been held constitutionally forbidden.

The churches, of course, are under no obligation to believe in the Constitution. They should reflect, however, on the wisdom (and the practical consequences) of the constitutional principle that government must grant certain religious exemptions, and may grant others.

Without such a principle, religious liberty would be seriously impaired. Total abolition of religious exemptions would mean that the Amish would have to give their children the kind of high school education prevalent in public schools today. Total abolition would mean, in many states, that kosher slaughtering of animals would be a crime. Quakers would not be exempt from the obligation to fight in time of war. Seventh Day Adventists and other sabbatarians would lose their unemployment benefits if they refused to work on Saturday.

All these exemptions, and many more like them, are well established in our law. They do not hurt the common welfare, and they are essential to the free exercise of religion. Government administration of these exemptions is fairly simple and requires no fine distinctions among the structures or functions of churches and religion. For most Americans, at least, repeal of all religious distinctions would be totally contrary to one of our most cherished liberties, religious freedom.

One practical consequence, however, of religious exemptions is that government must distinguish between meritorious and unmeritorious claims of such exemptions. Brothels and massage parlors have incorporated as "temples of divine love." Thieves have masqueraded as messiahs. Opportunists have created fake churches in an effort to avoid paying taxes. If government had to recognize every claim to religious exemption as meritorious, rascals would rapidly pervert the purposes of the exemptions and bring them into public disfavor.

A second practical consequence of religious exemptions is that they have to be reduced to legal formulas. Religious exemptions are impossible without religious classifications. Statutes have to use words and phrases to describe the exempt organizations and individuals.

For most American churches, religion suffuses the whole of life. But for the Federal and state governments, there has to be a distinction between the religious and the nonreligious—or at least between those religious institutions and activities that are exempt from certain laws and those that are not. If everything the churches or religious individuals do is religious, and everything religious is exempt,

the gulf between church and state becomes too deep for public safety. One has only to think of the recent tragedy in Jonestown, Guyana, to see that a total hand-off attitude by the Government toward every aspect of religious life is not compatible with the common welfare and the rights of individuals.

Under the Federal and state constitutions, then, and for the sake of the general welfare, government has to decide which criteria it should employ in deciding what is religious and what is not. Government must also decide which religious exemptions are mandatory, which permissible and which forbidden. With respect to the permissible exemptions, government must decide the exact scope such exemptions should have.

All of these decisions are necessitated by the constitutional framework of the state and Federal governments. The essential purpose of that framework was to guarantee religious liberty. All in all, the framework has served that purpose very well. Accordingly, the religious response to the question of whether government has any right to make any religious classifications or exemptions should be affirmative. Such a right is a necessary corollary, not a contradiction, of the churches' right to define themselves. The constitutional framework is an important legal bulwark of religious liberty—but the framework cannot work without governmental classifications and exemptions based on religion.

Once this preliminary question of the right of government to make some religious classifications and exemptions has been answered, the next and more complicated question arises. From the churches' point of view, which of the existing religious classifications and exemptions are good and which are bad?

The great variety of American churches makes it unlikely that a consensus can be reached on every existing law. I suggest, however, that as a starting point of analysis, the churches would do well to recognize that the constitutional categories (mandatory, permissible and forbidden exemptions) are inadequate. From the churches' point of view, religious exemptions fall into three somewhat different categories: the necessary, the desirable and the undesirable.

Christian faith certainly demands some such distinctions among religious exemptions. Christ has given his church the mission to preach and baptize. No temporal leader has the right to frustrate the accomplishment of that mission. But the church's right to freedom is not a right to wholesale dispensation from the obligation of reasonable civil laws. Government is the God-given collaborator of the church for the common good of all men. Christ came to save us from sin, death and the devil, not from civil laws.

The development of suitable criteria for judging the necessity, desirability and undesirability of religious exemptions is an essential part of any assessment of the legal developments in church-state relations during the last 10 years. Without pretending to be comprehensive, I suggest that the criteria should include at least the following elements.

The necessary exemptions are those without which the churches cannot fulfill their mission. For example, if the laws during Prohibition had banned all sales and transportation of alcoholic beverages, many American churches would have absolutely needed an exemption for the sale and transportation of sacramental wine.

The desirable exemptions are those that facilitate the work of the churches and preserve the distinction between church and state—without sacrificing the individual rights of others (believers or nonbelievers) and without seriously impeding the accomplishment of important temporal objectives, such as a stable economy or a healthy environment.

The desirable category also includes exemptions from laws that impose onerous requirements without any commensurate benefit to the public. For example, the churches should never hesitate to seek exemptions from laws whose only real effect is to create more paperwork for lawyers, accountants and bureaucrats.

The undesirable exemptions are those that exaggerate the distinction between church and state, that violate the individual rights of others (believers or nonbelievers) or that seriously impede the accomplishment of important temporal objectives—all without any compensating real increase in the freedom of the churches to accomplish their mission.

The undesirable category also includes religious exemptions that tempt the uncommitted or the antireligious to profess religion in order to avoid civil obligations, and those exemptions that create fine distinctions between the "religious" and the "exclusively religious" activities of the churches.

The Christian church learned long ago that not all exemptions are desirable. After his conversion, the Emperor Constantine exempted all priests from taxation. The law produced a tremendous jump in ordinations, especially of wealthy individuals. The Emperor then quickly imposed a quota on the number of ordinations, and forbade the ordination of any members of the upper class.

III.

Under the criteria I have proposed, only two of the church-state developments of the last 10 years strike me as truly objectionable. (I am not counting the Supreme Court decisions on educational assistance to children in parochial schools. The errors in those decisions lie outside the field of religious classifications and exemptions.)

The first objectionable development is the incorporation in federal statutes of two religious classifications: "integrated auxiliaries" and "exclusively religious activities." These classifications have no legal or religious history. They unnecessarily involve the Government in classifying the component parts of American churches on a scale of "churchness" or "religiosity."

It is altogether understandable that the Federal and state governments do not treat church-related hospitals the same way they treat parish churches. But legal language can be found to mark the proper distinctions without in any way denying or diminishing the religious or church character of the charitable, educational and welfare agencies of the churches.

Congress could say, if it chose, that certain types of exempt organizations (whether or not religiously affiliated, motivated or controlled) have to file periodic financial reports with the Internal Revenue Service. The discussion would then focus, as it should, on the public benefits and detriments from such extra paperwork, and not on whether certain activities are "religious" or "exclusively religious." Government agencies would not have to make artificial distinctions among the component parts of churches, labeling some "the church," others "integral parts of the church," still others "integrated auxiliaries," and the rest "none of the above."

More than a matter of semantics is at stake. To comply with the Constitution, to ensure religious liberty and to protect the common welfare, government has to be able to tell whether an organization is a church or an activity is religious. But government does not have to deny the religious right of the churches to define themselves. The more refined legal classifications of religion become, the greater the danger that government will constrict the concepts of church and religion. The Founding Fathers meant that government should respect the roles of religion and churches in American society, not define them.

The second objectionable development of the last 10 years is the increasing willingness of Federal agencies to decide major church-state policy questions that Congress has not decided.

The National Labor Relations Board should not have asserted jurisdiction over parochial schools without a clear mandate from Congress. Treasury should have reported to Congress that "integrated auxiliaries" and "exclusively religious activities" were unworkable and highly objectionable religious classifications, and waited for further Congressional instructions before writing definitional regulations.

The Department of Labor should have informed Congress of the ambiguities Congress has created with respect to the unemployment tax and lay teachers in parochial schools, instead of ruling that Congress has decided what it clearly has not.

In all three of these instances, two questions have to be kept quite distinct. It may well be that Congress ought to impose the unemployment tax, N.L.R.B. jurisdiction and periodic financial reports on certain types of church agencies that have hitherto been exempt from those obligations. But it is quite a different thing for Federal agencies to make these kinds of basic changes in church-state relationships without a clear mandate from Congress.

I myself would not find it seriously objectionable if Congress had done what the agencies say Congress has done. What I find extremely objectionable is the agencies' aggressiveness in resolving basic policy questions that Congress has left unanswered.

The necessity, desirability or undesirability of particular religious exemptions from general laws, such as the unemployment tax, are questions that have to be decided in light of all the concrete facts at a given point in our social history. The churches and Congress should decide those questions—not the Federal agencies.

IV.

American churches should not find it difficult to agree with the general proposition that some religious exemptions are necessary, some desirable and some undesirable. They should also find it possible, after study and discussion, to agree on at least some of the general criteria for necessity, desirability and undesirability. Where the disagreements are likely to come is in the application of the criteria to particular laws and particular factual situations. Even here, however, I believe that a fair measure of consensus will emerge after appropriate study and discussion.

The development of such a consensus is the single most important remedy for the friction that has been growing between church and state in the last 10 years. I see no evidence that the Federal and state governments harbor any general hostility toward religion or the churches. Occasionally, some governmental officials are guilty of fumbling, religious illiteracy and even of malevolence. But most of the difficulties that the churches have been experiencing stem from governmental inattention to the complexities of the structures and functions of the churches in American society.

The churches need to educate the state and Federal governments about the proper types of religious classifications and exemptions. But before the churches can sit down with government, they must first sit down with each other. They need to think through, much more thoroughly than they have yet done, the necessity, desirability and undesirability of religious classifications and exemptions.

Mediating Structures and Constitutional Liberty

(By William Bentley Ball)[1]

People who cherish freedom must dare to resist the monopolists of governmental bureaucracy.

There are those of us whose job seems always to be immediate problem-solving. We are like people frantically busy piling up rocks with the fleeting notion that perhaps they are building something. *To Empower People: The Role of Mediating Structures in Public Policy* by Peter Berger and Richard Neuhaus (American Enterprise Institute, 1977) offers a portrait in which resemblances can be seen between the haphazard rock pile and the city of good "mediating structures" there portrayed.

Approaching the subject as a lawyer, the question at once comes to mind: Do we need mediating structures (family, church, voluntary association, neighborhood, racial and ethnic subgroups) in a society governed by the American Constitution? If the "mediating structures" are thought to be necessary to protect the individual from the state, is that not precisely the function of the Constitution? Neuhaus and Berger suggest that the Constitution (at least under some interpretations that are given some of its provisions) does not suffice—indeed they say that its protections in some instances have the effect of enforcing the anarchic wills of individuals at the expense of community. Jacques Maritain notes in *Man and the State* that strains of eighteenth-century rationalism, still active in our constitutional life, indeed promote such results. At the same time, he observes that forms of nineteenth-century liberalism have produced an opposite tendency: statism. So today we see in America two forces moving across our social fabric: anarchic individualism and growing state social monopoly. Both, of course, militate against the values that mediating structures would sustain.

There is, I believe, taking place today a war to obliterate mediating structures, and there is not even a beleaguered battleline at which their defenders attempt a stand. There are almost no defenders. Where the structures are institutions, many of their custodians are abandoning them—schools, hospitals, child-caring institutions. I will presently inquire why those who should be mounting a counteroffensive are taking to their heels. But first I will note briefly why it is that the attack is so intensive.

Government in America has become an industry, greater, more dynamic, wealthier, and more expansionist than ever the capitalism of the Harrimans and Rockefellers was in its nineteenth-century heyday. Government is the direct source of livelihood to a substantial portion of our population. Coupled with this is a sort of religious view—increasingly pervasive in government—that individuality, to the extent that it is allowable, may exist only within prescriptions written by government. Government agents are therefore trained to recite respect for pluralism, for example in health care or education, just so long as the particular manifestation of pluralism is not an initiative taking place *outside* governmental purview.

In the health care area, under new federal law, local health agencies are neither mandated nor empowered to take into consideration the religious character of a particular hospital nor the religious needs of the community to be served. So while many nice things are said by legislators about "the distinctive contributions of the voluntary sector," one of the chief contributions of that sector—namely, its capacity

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to respond to the needs of particular groups of individuals (and thus to be a mediating structure)—is ignored in the fact.

In the education field recent attempts of government to promote monopoly by talking pluralism represent new heights in the progress of doublethink. Consider, for example, a passage from Kentucky's "Standards for Accrediting Elementary Schools," which that state seeks to apply to all private schools. Standard II is entitled "Statement of Philosophy and Objectives" and says in part: "Each school shall develop educational beliefs and objectives which reflect: (1) the unique needs of all the pupils it serves; (2) the values of human traditions; and (3) the involvement of parents/guardians and the community at large."

This paragraph, however, is set in the midst of a comprehensive regulatory program whereby the state defines to a considerable extent the education that may be offered by the private school. Even apart from that, the above quoted standard *itself* puts private education within state confines. Aside from the rather odd command that a private school (or any *school*) develop educational "beliefs," is the fact that the state tells the school that those beliefs must reflect "the involvement of the community at large." That is to say, a Seventh-Day Adventist school located in a large city would apparently be required to conduct a city-wide consultation, which that school's beliefs and objectives would then have to reflect. (Should not then a public school located in a 90 per cent Polish Catholic neighborhood, or a Hasidic school located in a largely black Protestant community, be forced to reflect those settings?)

When I speak of the governmental "attack" on mediating structures existing in the health, educational, and charitable fields, I do not mean to suggest that state authorities manifest a conscious design to single out and penalize or obliterate these structures. The governmental endeavors usually originate in a totally innocent presumption of total governmental competency. Hostility usually sets in only when the assumption of superiority is questioned.

Such questioning is depicted as a demonstration of both ignorance and disobedience. It is also seen as a threat to the industry—the industry of regulating (the same industry being the source of the income, security, perquisites, and social rank of the government administrator). In addition there are, of course, some mendacious public servants, nor should it be denied that there are movements within government that deliberately push for ideological goals suppressive of the freedom that mediating structures support. Obviously it is a mixed picture. We who would save mediating structures, and indeed advance them, should not assume evil intentions on the part of government servants who act against them, nor should we assume that such intentions do not exist.

We, the People—for the sake of better union, for justice's sake, to have domestic tranquility, to defend ourselves, to promote our general welfare, and to "secure the blessings of liberty"—have made our Constitution. There are natural groupings in society that also promote those ends, some being so intimately related to the enjoyment of those ends as to be indispensable. It is all very well, for example, to say that the First Amendment protects a person to worship in the way he pleases, but if we were to say that this individual right does not include his doing so as part of a worshiping church, we have obviously denied him one of the prime "blessings of liberty."

But "blessings of liberty," as the phrase appears in the Preamble, does not exist merely for individuals. The broad phrasing is "for ourselves and our posterity." The courts have long recognized that at least some natural groupings enjoy liberties *as groupings* and apart from the individuals who make them up. The Supreme Court, for example, has held that the Constitution protects the religious liberty of churches. As recently as 1976, the Court, in the *Serbian Orthodox* case, reiterated its century-old insistence that "It is the essence of these religious groups, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for" (*Serbian Orthodox Diocese* v. *Milivojevich* 426 U.S. 696 [1976]).

As we shall see, however, in one of the most important of all mediating structures in our American life—that of the schools—both educational liberty *and* the liberty of churches are threatened. If all education becomes state, or state-dictated, education we will then have destroyed that mediating structure which is the keystone of our entire structure of human liberty.

A nonpublic school [2] is a mediating structure in several ways. For many parents, it is, next to the family itself, the chief area of life in which parents exercise what

[2] Education, of course, can take place in situations or in encounters that are not "schools" in the popular usage of that term.

the Supreme Court has recognized as their "primary role" in the upbringing of their children (*Wisconsin* v. *Yoder,* 406 U.S. 205, 232 [1972]). They exercise that primary right, not directly in day-to-day instruction,[3] but in the important matter of the choice of the school. While some statist lawyers attempt to pass off *Yoder* as an offbeat decision regarding an ancient and unique social phenomenon in our midst, the Court looked upon the Amish very differently. It scrutinized carefully the Amish parents who had taken the stand at the trial, seeing them not as characters in a costume play but as twentieth-century parents seeking liberty—liberty of education for their children in a way that parental conscience demanded. This was a different way indeed from what the State of Wisconsin defined as needful for these children; it was different, too, from what the community of New Glarus, Wisconsin, believed was best for them. It was in fact an education that did not even involve schooling, as most understand that term. Here is what the Court had to say:

But in this case, the Amish have introduced persuasive evidence undermining the arguments the State has advanced to support its claims in terms of the welfare of the child and society as a whole. The record strongly indicates that accommodating the religious objections of the Amish by foregoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

Parents provide one factor in the private school as mediating structure; children provide another. It is in schooling that the child's opportunity to have what is best for him in education may be realized. In the child this is a sort of derivative right exercised for him by the parent. He is enabled to have an educational experience distinct from the state's program, and one that is linked, because of parental choice and perhaps also because of religion, to the family. In *Yoder* Mr. Justice Douglas, in his separate opinion, fretted over whether the Amish children's rights had really been protected. Acting for the Amish, we had put the children on the stand and they were fair game for the prosecution (which, perhaps wisely, did not choose to match wits with these innocent and well-spoken witnesses). We put them on the stand, however, not because we espoused "child rights" independent of parental rights, but in order to put on the record that these children were fulfilled and happy by virtue of that distinctive nonstate education which is the Amish Way.

Now we introduce into this mediating structure the factor of religion. We then see the structure at its maximum importance: The religious school is unique in enabling religious parents and children to know, love, and serve God. It is thus an instrument indispensable to the free—and full—exercise of religion. Let those (I shall speak more of them presently) who press for government regulation of religious schools, or who would manipulate the tax structure to starve them out, note that well. Also let those who quail in the face of government threats, or who would secularize the religious schools in return for public aid, also take note.

The *religious* school is a mediating structure because it is a manifestation (sometimes heroic) of the religious faith of a community. Community consists of the believers, or church, whose faith and whose sacrifices bring the school into being. The school would not exist except as an extension of, an expression of, the faith community. (Of course, if it begins to see itself as a secular endeavor with religious aspects, it has not only lost its soul but it is no longer a mediating structure. It becomes in fact the opposite. Instead of acting as an enabler of religious freedom in the presence of the state, it acts as a promoter of state ends, to which it is willing to modulate the religious presence.)

In the face of the present assault on mediating structures, their natural protectors appear to be in flight. In the case of private schools, instances at the hour are myriad. Looking only at federal assaults, we see, for example, HEW's Title IX Guidelines on sex discrimination. Those were not Congress-mandated; they were homemade by administrators. These preposterous departures from statute forbade a school to dismiss a student from its education program on the basis of such student's "pregnancy, childbirth, false pregnancy, [or] termination of pregnancy" (40 CFR 24128, § 86.40 Nondiscrimination on Basis of Sex [June 4, 1973]). What is more important about the Title IX Guidelines is not their substance but the reaction to that substance. It would hardly be correct to say that private educational groups (including major religious groups) got in line with government regulation; in fact, they led the parade. They promptly sent out detailed memoranda to their memberships on how to comply. None of them apparently paused to ask those legally obvious questions that ought to come naturally to citizens of a free society: (1) "Did

[3] Some parents do undertake the job of educating their children in the home—a matter that involves constitutional and other considerations not relevant here.

Congress give HEW power to impose all these specific requirements?" (2) "If it did, did the Congress act within our Constitution?" A few months ago, and continuing to the present, the federal Census Bureau circulated to religious schools throughout the nation Form CB-82, marked "Census of Service Industries." The form demands that seminaries and other church entities furnish the Government its total annual 1977 payroll, 1977 operating receipts and/or total revenue. This is odd. The statute cited as authority for this remarkable religious exploration by the Department of Commerce is 13 United States Code, Section 131, which requires the Secretary of Commerce to take censuses of ". . . manufactures, of mineral industries, and of other *businesses,* including the distributive trades, service establishments, and transportation . . ." (emphasis supplied). Again, major religious groups jumped through the Government's hoop. They saw no need to fuss over churches being classed as "businesses." They feared moreover that if they made a fuss, these public servants might *really* get tough.

Altogether too many other examples can be cited of current governmental assaults upon private religious schools and other religious endeavors as well as of the supineness of religious representatives in response. Perhaps "supineness" is not the proper term. On the part of some it seems a virtual eagerness to accept the intrusions. One can only guess why. Perhaps it is the pathetic desire, so manifest today among leaders of once-religious colleges, to be part of the "mainstream"—the love of appearances. I am sure that it is due, in part, to real but utterly misplaced fear. To those who fear the evil thing that public servants may do, "Don't make waves!" is the standard to observe. This is not the place to respond at length to either of these mentalities, beyond advising the image-conscious that the highest calling may sometimes consist in moving from the mainstream of contemporary fad to the mountain top of principle and integrity, and advising the fearsome that we are not yet a People's Republic and that we do *not* have to live by sufferance of public servants.

There is also a picture of resistance, and it is a glowing one. In a series of litigations now in the courts, mediating educational structures that have come under attack are engaged in vigorous counterattack. They are cases on the cutting edge of civil liberty in education, and how they ultimately turn out will have close bearing on how free our people will be in the future.

The first group of cases involves governmental aid to children attending private religious schools. The children receive the aid upon the premises of these schools. Several organizations have challenged such programs in court, contending that they constitute an establishment of religion forbidden by the First Amendment. In their view the main effect of the aid programs is to advance religion. They also claim that it creates excessive entanglements between Church and State. These arguments are familiar and have achieved success in prior Supreme Court decisions, which have held that most of the really workable and practical forms of aid to the educating of children in religious schools are barred by the "Establishment Clause." Five Justices of the present Court appear to subscribe to the view that the Founding Fathers would have been most upset over the notion of a publicly owned bus being used to provide a field trip for a child who meets compulsory attendance requirements in a religious school, if the school teacher chooses the destination. Mr. Justice Blackmun said that "it is the individual teacher who makes the trip meaningful" and "where the teacher works within and for a sectarian institution, an unacceptable risk of fostering of religion is an inevitable by-product" (*Wolman* v. *Walter,* 433 U.S. 229 [1977]). Here the Supreme Court, once again, provides the sectarian school teacher as an automaton, an image it first presented to the nation in *Lemon* v. *Kurtzman* (403 U.S. 602 [1971]).* So in a field trip, although the statute is designed "to enrich the secular studies of student, and although the teacher is both intelligent and law-abiding, he will compulsively convert the countryside into a maze of religious objects and willy-nilly direct the bus driver to the nearest shrine.

Thus the mind of the present Court on the "Establishment Clause" in this grouping of cases. Assuming, *arguendo,* that the services in question are good for children, and that the school believes that certain services may be "neutrally"

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* In *Meek* v. *Pittenger,* 421 U.S. 349 (1973), the trial record disclosed the testimony of a Lutheran children's psychologist who was hired by the state to provide psychological services in nonpublic (including Catholic) schools. His sworn testimony showed him a competent professional who considered himself bound by the code of ethics of the American Psychological Association *not* to introduce religion into his services. In the face of the record six justices held that, once he crossed the threshold of the religious school, "the potential for [his] impermissible fostering of religion . . . is nonetheless present" (*Id.* at 371). The Court did not make it clear whether the Catholic school would beam Catholic notions at him or whether he would beam Lutheran notions at the children. The record showed that neither had happened. But the six justices were dead sure that one or both would.

rendered to children, how should the programs be defended? There is only one theory of defense compatible with religious liberty, and that is as follows: (a) there is a right, guaranteed by the "Free Exercise Clause" of the First Amendment, to have a child's education in a religious school; (b) there is a parental right, protected by the Constitution, to choose the form of education one desires for one's child; (c) most parents today are oppressed by excessive taxation and inflation and find it most difficult to exercise those rights without some form of economic accommodation to them by government; (d) the programs are beneficial to children; and (e) while they entail aid to religious institutions in only an indirect and minimal way, the resulting "Establishment Clause" considerations are vastly outweighed by the "Free Exercise Clause" considerations. In other words, government is constitutionally obligated to make accommodations to Free Exercise and parental choice.

Amazingly, instead of that defense, some would propose a wholly different theory—namely, that it be represented to the courts that the religious schools aren't all that "religious," that they are not "narrowly sectarian," that they are in fact so religiously "neutral" as to be aidable with public funds—*indeed within the strictures laid down by the Supreme Court in the prior cases denying aid*—and even within the bizarre doctrine on field trips! This "defense" of certain programs throws away the real defense of religious liberty. For religious schools to claim that "There ain't nobody here but us neutrals" denies the true nature of those schools and trades off integrity in return for public aid.

A second grouping of cases relates to efforts of government, through the National Labor Relations Board (NLRB), to regulate employment relationships in private religious schools. The opening targets have been Catholic schools, which have numerous employees. Unhappily, at the outset a number of those schools capitulated to the NLRB demands. Justifying these surrenders on hazily stated grounds of "social justice" as well as the "inevitability" of governmental success, oblivious to the inheritance which was theirs to protect, and blind to the real significance of NLRB demands, the schools in question helped build crippling precedents for other Catholic schools that had a higher vision of themselves and their liberties and were willing to fight for them.

Happily, some schools have decided to resist in court. In the Diocese of Gary the bishop took NLRB to court, and in the Archdiocese of Philadelphia five pastors of parish schools sued NLRB and secured an injunction against that body. The Supreme Court has agreed to consider in its coming term the question of NLRB jurisdiction over religious schools.[5] Supremely at stake in the NLRB litigation are the "Free Exercise of Religion" rights of religious schools. These cases are not merely instances of governmental entanglements with these schools; although, because of the entanglements the liberties of the schools to self-government are precluded. But at a more profound level is the question of what constitutes "religion" within the meaning of the First Amendment. The Government contends that the Catholic schools are "only partly religious." If this mischievous view were accepted by the Supreme Court, we would have established in American constitutional law a truly secularist view of religion—the "religion of the sacristy," to borrow the phrase borrowed by John Courtney Murray. That is the kind of religious freedom the constitutions of various People's Republics provide for. From Roger Williams to Jesse Jackson it has been repudiated in our tradition.

The third grouping of cases is of perhaps the most critical significance of all. It is the effort of fundamentalist Christian schools to survive in the face of state attack. They have managed thus far to resist successfully the efforts directed against them. In three of the four chief cases that have come to the courts, the attack on the schools has been in the form of criminal prosecutions against parents for having their children in non-state-approved schools; in a fourth case the state has sought an injunction against the schools themselves. Two of the cases resulted in victory for the parents (*State of Ohio* v. *Whisner, et al.*, 47 Ohio St. 2d 181 [1976]; *State of Vermont* v. *LaBarge, et al.*, 134 Vt. 276 [1976]); the other two cases are about to go to trial (*Hinton, et al.* v. *Kentucky State Board of Education, et al.; State of North Carolina, et al.* v. *Columbus Christian Academy, et al.).* Without going into the lengthy details of these cases, let me touch upon them only as they relate to mediating structures.

First, we note the presence of maximum governmental pressure on these fundamentalist schools. In three cases, in fact, the pressure has consisted in criminal prosecutions. In the fourth case, where an injunction is sought, the state has made pointed reference to its compulsory attendance statute under which, of course, criminal proceedings may be brought. One asks, Why such pressure? It is obvious

[5] More recently, the Lutheran Church—Missouri Synod, which operates the second largest system of religious schools, has joined vigorously in the resistance.—*The Editors*

that, if people must pay fines or go to jail because they choose particular schools for their children, it is the schools themselves that are doomed. The next question then is, What sort of schools must these be that they must be run out of business? Surely they must be places of disease or physical danger, or schools of vice or subversion, or frauds that take tuition from people and then turn out incompetents, illiterates, or non-law-abiding graduates.

The facts are overwhelmingly to the contrary. The schools are decent places, safe and sanitary, and not racially segregated. The pupils are well-mannered and happy. They have learned prayer, love of God, neighbor, and country—and that's obvious. They achieve a feat remarkable these days: They speak and read English. They test well in nationally standardized basic-skill tests. Their parents are law-abiding folk, and the children promise to be. Once you have become familiar with these schools, you know them as true mediating structures—few and small, it is true, though growing. They are places in which people realize a way of life, fulfill hopes, and seek good things for their children. Thus they *enable* freedom. Why then the government pressure? One can but guess.

There is, of course, the "government-as-industry" point to which I have already alluded. There is also observable, however, an undeniable *animus* that helps fuel these cases—a righteousness without being right. After all, the fundamentalists are often vulnerable—few in number, few of wealth. Perhaps powerlessness attracts harshness. Again, it may be that when public servants remain prudently silent about the major corruptions that are everywhere, it is a relief to be able to denounce evil when the evil consists of resistance to a petty regulation by people who have few political friends.

I suspect, however, that there may be another factor that propels great state exertions against these innocent people: money. Behind the public schools lies a vast industry. Public schools are declining in population and approbation. Bricks, cement, furniture, plumbing, air conditioning, equipment—all these industries gain when a public school is built; and they lose when building declines. Then there is the book industry and the electronic media manufacturers. Nonpublic schools often use old buildings and often (good) old books. If they build, it is inexpensively, and when they buy it is with frugality. There are other money factors; for example, the loss of state reimbursement to school districts when nonpublic schools are established. And the job factor. Nonpublic schools absorb child populations that would otherwise afford the basis for the hiring of teachers, administrators, and maintenance personnel in public schools.

Perhaps these factors go a distance toward explaining the hysteria that routinely greets resistance to state absorption of nonpublic schools or the affording of any sort of relief to nonpublic school parents or aid to their children. Public school leaders, lobbyists, and attorneys, with histrionics rarely seen outside Verdi operas, predict the imminent and cataclysmic doom of the public school. They have reason for concern; in some states more than 50 percent of all state monies goes to public education.

In most of the court cases in which mediating structures are now fighting for their existence what may we expect? Attorneys who predict litigation outcomes for clients usually speak foolishly. What we may expect in these cases can be seen only in light of the basic test the Supreme Court has laid down in those cases in which the state seeks to restrict personal liberty: "the State may prevail only upon showing a subordinating interest which is compelling" (*Bates* v. *City of Little Rock*, 361 U.S. 516, 524 [1960]). The mediating structures must put the state to the test; not the other way around. Government must be made to show precisely how the interests that it asserts are compellingly superior to the healthful, innocent, and freedom-accommodating life of a mediating structure. While the mediating structure must demonstrate the reality of its constitutional claim, it must never, in its own defense, strike its colors, depart from principle, settle for less than true liberty. If penalties and prisons may be the immediate reward for resistance, freedom for our posterity may be its ultimate gift.

Mr. BERGSTROM. Also there is a series of regulatory actions and also other legislative activity that many of the church bodies have looked at as almost a series of movements on the part of government which some call oppressive, some call more investigative—and so that we look at this almost as a part of other activities.

At the top of page 2 are listed some of those areas of concern that have been considered by these church groups.

A number of us submitted testimony to the oversight subcommittee on a particular regulation of IRS dealing with private schools and desegregation late last year.

Mr. Lynn can present much better than I, because of his background as a lawyer, some of the constitutional questions; but lawyers in our churches raise questions, particularly in the areas of the listing of contributors, the whole matter of grass roots lobbying, which we consider part of our ministry and our mission back to our congregation and to our people; and then the criminal sanctions.

Those three things are of particular concern to us as we testify here this morning.

Then on the whole area of the purpose of the legislation, somehow it comes across to many of us in advocacy groups that the aim is to get information about large lobbying organizations, and pressures, and activities on their part. But it seems that the real difficulty is going to be for the smaller organizations.

And I know you've heard that a number of times, but I simply reiterate it from the viewpoint of the church offices that are here; that in a sense, what is going to happen, most of those large, professional organization can hire the staff and produce the information, but many of us are small offices.

In my particular office we are representatives of our church groups, but we don't have large staffs very often to carry out detailed work and keep the records that might be involved in this.

Two of the church groups at least passed ordnances and actions last year overwhelmingly at their conventions opposing the lobby disclosure legislation of that period; these were the Lutheran Church in America and the Southern Baptist Convention.

I would like also to say that if there was a negotiating point I would personally talk about, I guess it would be the threshold, Mr. Danielson; the matter that although it seems to be aimed at large groups, $2,500 is not a lot of money to spend or the other larger amounts in some of the other proposals.

I would suggest an amount I suppose like $250,000 to $500,000 a year; it would seem that scale would include the large groups that you are concerned about.

And Common Cause's testimony talks about significant, major, and heavily engaged types of lobbying; and we are well aware that there is such.

The overhead expenses seem to us a bit unfair. I am sure you will hear that note in much of the testimony today; and you have probably already heard it. But that's part of our work, and it is very difficult to divide up as to what we are doing in direct relationship to talking to you in advocacy, or what it might mean also in terms of our regular activity as church groups.

In conclusion, I would like to say that I have watched over the past year the concerns the churches have expressed, and I have summarized these.

You have perhaps heard of the Roman Catholic Bishops at their gathering last fall, and they had considerable concern about the relationship of church and government. There were some comments even about terrorist tactics and things of that kind on the part of some of the bishops; and they in a monitoring committee headed by Bishop May of Mobile, Ala. tried to take a closer look at

this whole area, and how we might work constructively together, without becoming troublesome or bothersome to Congress.

And I am sure church people, like others, are not always nice when they come to talk to you in your offices.

Mr. DANIELSON. You are invariably nice.

Mr. BERGSTROM. Thank you. [Laughter.]

I have not always found that to be true.

Lutheran consultation is in process now—it's a 9-day period of consideration about the government in church relationships.

Again, that reaction only to government activities and legislation, we hope is constructive, so there can be cooperation for the common good of people.

The officers of our church body here in Washington that I referred to earlier, have had several meetings already; and we are planning more, to see if there is some way that together we can speak to this particular issue.

I have listened to the comments of Congressman Kastenmeier in the Congressional Record about regulations as they affect small businesses; and what he said there about the unfair burden of reporting and cost, seems to be true, as I said, about these bills.

The writings of Father Charles Weyland, a respected person in church-state relationships indicate a growing concern.

Another point I would like to make, sir, is that there's a complexity of our churches. We don't have a hierarchical organization in Lutheranism that gives us a central area of keeping records of who is lobbying.

We have associations, conferences, congregations, districts, and all kinds of interrelationships that I wanted to speak to at this point.

These days there are probably 500 people from various parts of the country in Washington. They are at the present time in the Cannon House Office Building listening to a presentation, as they've been doing for three days.

Over this period of time they've listened to Representatives from the House, Parren Mitchell, Steven Solarz, Morris Udall, people like John Gilligan, and Paul Monikey, from other areas of government, Mr. Castille, on Immigration, other members, again, of the House, Pat Schroeder, Charles Randall, Richard Nolan; and in just a few minutes, Father Drinan will be addressing them on the very issue that we are talking about here, the government and the church interaction.

Monday evening we gathered together the Lutherans who were here for this particular kind of gathering. Now, we invited the Lutherans in the House and Senate, we invited the people who are here for this kind of review and input; we invited staff people of the Lutheran Church to meet.

And I am not sure if that is a reportable kind of activity. But I use that as an illustration of how we try to support the people in Congress through our church activities, how there are times when we have a deep concern for things that happening in terms of aid to the poor and other areas.

And I want to turn to that constructive note which I wanted to sound at the beginning, that we want to relate to this and try to find ways in which we can do it without being overburdened with

activities and records that we really question are going to be helpful to you and us.

I would like to close with a comment from Mr. John W. Gardner—perhaps you are aware, he is working closely with the 501(c)(3) nonprofit organizations today in terms of taxation, but also in terms of their activities.

In this presentation he mentions the fact that this is a group that's brought a great deal of innovative kinds of relationships to our country, and that the spirit that might come to them is really a devastating one; it could be harmful.

And these are the words that I would like to quote from that message:

> We are told that Congress and the vast agencies of government could do a better job. But somehow the ample evidence on government doesn't drive one toward that conclusion. When all activity serving public purposes is safely under the Congressional control, what outlet will be left for all the personal caring and concern that is now the driving force of voluntary, independent, unbureaucratic activity? This is not to speak contemptuously of the Federal Government; but the government will best contribute to the health of society if it can actively further the vitality of the private sector.

Thank you very much.

[The full statement follows:]

STATEMENT OF THE REVEREND DR. CHARLES V. BERGSTROM, EXECUTIVE DIRECTOR OF THE OFFICE FOR GOVERNMENTAL AFFAIRS, LUTHERAN COUNCIL IN THE U.S.A. ON PUBLIC DISCLOSURE OF LOBBYING

Mr. Chairman, members of the Subcommittee, we are grateful to have this opportunity to present testimony on lobby disclosure legislation and want to commend the Subcommittee for its thoughtful review of this difficult issue. My name is the Rev. Charles V. Bergstrom, Executive Director of the Office for Governmental Affairs, Lutheran Council in the USA. I am testifying on behalf of the Washington Interreligious Staff Council, which is the ecumenical organization of church-government liaison offices located here in Washington, and also on behalf of the American Lutheran Church, the Lutheran Church in America, and the Association of Evangelical Lutheran Churches.

The church has a deep interest in this legislation because its form will impact on the religious community's ability to perform responsible advocacy work in the areas of peace, justice, and human rights. Lobby disclosure legislation which contains provisions which affect grass roots solicitations and disclosure of contributors, coupled with threats of criminal sanctions, could chill our legitimate and necessary ministries of education and advocacy. Lobby disclosure legislation resembling the bill which was passed by the House last year is one of a series of disturbing Federal legislative and regulatory actions which adversely affect the church community. These actions include the proposed charitable solicitations disclosure legislation; IRS definitions in 1976 and 1977 of the term, "integrated auxiliary" of a church; IRS restrictions on the "political education" activities of all tax-exempt organizations; attempts by the National Labor Relations Board to win jurisdiction over church school teachers; an April ruling by the Department of Labor requiring church-sponsored schools to pay unemployment insurance taxes because the government states that their employees' activities are not "religious"; and a recent IRS procedure concerning racial discrimination and private, tax-exempt schools.

GENERAL OBSERVATIONS ON LOBBY DISCLOSURE LEGISLATION

We have several general comments on the lobby disclosure legislation and its impact on the churches' advocacy efforts. The church, like other public interest groups, finds that in the interest of open government and the public's right-to-know, lobby disclosure legislation may jeopardize the fundamental constitutional rights of freedom to petition the Government for a redress of grievances, freedom of speech, and freedom of religion. We concur with the statements presented to this Subcommittee by Congressman Don Edwards and others that in enacting lobby disclosure legislation, Congress must certify that these fundamental First Amendment rights have reached a dangerous level of abuse and that there is compelling interest for government intervention and regulation. We feel strongly that the burden of proof

is on this Subcommittee to provide an explicit record of abuses which clearly justifies the type of legislation which passed the House last April.

We also feel compelled to comment on the negativism which shrouds the discussion of lobby disclosure legislation. Many of us have carefully followed the discussion of lobby disclosure legislation in the 94th and 95th Congress and have reviewed all of the testimony presented to this Subcommittee over the last two weeks. A common and disturbing notion resurfaces in the statements of those who favor legislation along the lines of H.R. 1979, which is identical to the bill which passed the House last year. When discussing the need and justification for the legislation, reference is continuously made to the public's perception of lobbyists and the presumption of corruption. The word "lobby" immediately conjuries up negative images and this connotation is often enforced by those who are pressing for far-reaching reforms.

Consequently, it is implied that sweeping reform is necessary if we are to save our legislators from the ravages of so-called Washington lobbyists. However, as John Gardner the founder of Common Cause has stated, " 'Lobbying' is, in fact, regarded as a modern word for the right of people 'to petition the Government for a redress of grievances' as guaranteed in our Bill of Rights. It is an important part of the democratic process." It must be made clear to the American people that not all Washington lobbyists are motivated to petition their legislators out of a narrow, often profit-motivated self-interest. Instead, this city has many organizations which work to influence the outcome of legislation because of a broader public interest and legitimate concern about promoting the common good. If lobby disclosure legislation with low threshold requirements is enacted, I do not fear for the future of the major and significant lobbying campaigns, which have the ability to hire one or two accountants in order to comply with the new law. It is the smaller, less-funded organizations that will shoulder the heaviest burden and which may ultimately fold under the pressures and requirements of the legislation.

COMMENTS ON SPECIFIC ELEMENTS OF A LOBBY DISCLOSURE BILL

(1) Reporting of Grass Roots Lobbying Efforts and Disclosure of Organizational Contributors.—The church opposes the inclusion of these two requirements in any lobby disclosure bill. We feel that both provisions are unconstitutional and we support the arguments put forth in this regard by the American Civil Liberties Union and Congressman Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights.

The Ninth Biennial Convention of the Lutheran Church in America, with delegates from all of its 33 districts meeting in Chicago on July 17, 1978, adopted a resolution concerning lobby disclosure legislation. The resolution stated that lobby disclosure legislation covering the solicitation of funds and disclosure of contributors substantially affected the free exercise of religion and infringed upon the right of church bodies to carry out their advocacy work on public issues related to their religious mission. It was further resolved by the convention that the Lutheran Church in America, which has 2.9 million members, opposed the lobby disclosure bill, as passed by the House last year. A copy of that resolution is appended to my statement which I will submit for the record.

In 1978, the Southern Baptist convention also voted overwhelmingly in opposition to the legislation. In fact, the government liaison offices of all religious bodies related to the Washington Interreligious Staff Council are united in their opposition.

(2) Criminal Sanctions.—The church joins the Justice Department, Common Cause, the ACLU, and others in urging the Subcommittee to eliminate the criminal sanctions contained in many of the lobby disclosure bills introduced in the 96th Congress, including H.R. 81 and H.R. 1979. First, we do not believe that criminal sanctions are necessary in order to enforce the Act. The civil penalties contained in the legislation are sufficient. Secondly, criminal penalties will intimidate many smaller groups and individuals who may wish to involve themselves in the lobbying process, but who are frightened by the prospects of incarceration. Criminal sanctions would have a chilling effect on free speech and the guaranteed right to petition the government.

(3) Registration and Reporting—Threshold Requirement and Definition of Expenditure.—If it is the wisdom of the Congress to enact lobby disclosure legislation, then we submit that the threshold contained in H.R. 81 and H.R. 1979 is not high enough to exclude those organizations which the Committee decided last year should not be covered by the Act. In its deliberations on the threshold requirement, the Subcommittee attempted to establish a reporting level which "would apply to organizations engaged in continuing and substantial lobbying activity" (H. Rept. No. 95–1003, p. 48). In its testimony advocating an effective lobby disclosure law, Common Cause

makes constant reference to "significant," "major," and "heavily engaged" lobbying campaigns.

We question the $2500 threshold requirement and feel that its scope goes beyond significant and major lobbying campaigns and includes smaller lobbying efforts and organizations least likely to "affect adversely the integrity of the legislative process." Our small Lutheran Council office with four full-time program staff people would most likely fall within the scope of the Act and we would be burdened with the cumbersome and costly bookkeeping requirements mandated under the disclosure legislation. In addition, should the grass roots solicitation provision become law, the Lutheran Council office, because of its organizational structure, would have to report all of the contacts we have with our constituent church bodies.

According to the language contained in H.R. 81 and H.R. 1979, a lobbying expenditure includes any payment made "for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in Section 3(a) of the Act," dealing with lobbying communications. The church urges the Subcommittee to exclude from the threshold determination such overhead expenses. The record keeping requirements associated with tracking and reporting overhead expenses used in making lobbying communications would pose undue and harsh burdens on the capabilities of small advocacy organizations.

CONCLUSION

The churches' concerns about lobby disclosure legislation can be summarized as follows:

1. We oppose on constitutional grounds any legislation which mandates the reporting of grass roots lobbying efforts and disclosure of contributors.
2. We support eliminating criminal sanctions from any legislation reported to the House.
3. We urge the Subcommittee to restudy the threshold requirement so that only those organizations engaged in "continuing and substantial lobbying activity" fall within the scope of the Act.
4. We support amending the definition of expenditure to exclude overhead expenses from the threshold determination.

The church is wary of all legislative proposals aimed at regulating the activities of non-profit lobby organizations. In considering lobby disclosure legislation, Congress needs to reassess its understanding of non-profit lobby efforts and the services which many non-profit, public interest groups render in search of peace, justice and human rights. Churches seek to provide such services. Closer and constructive interaction can help to serve the common good.

We have serious constitutional problems with many of the lobby disclosure proposals under consideration by this Subcommittee and insist on a carefully structured bill. We support the March 8, 1979, Washington Post editorial—which is the fifth in a series of strong editorials opposing far-reaching lobby disclosure laws—stating that narrowly defined legislation "serves the national interest in free discussion of public affairs." If Congress passes a bill which mandates the reporting of grass roots lobbying efforts and disclosure of contributors, this legislation will have a chilling effect on the churches' mission in the world and may serve to delimit the church to the sacristy.

Thank you.

Mr. DANIELSON. Thank you very much.

There is only one question I must ask: quite a distance back in your testimony you used an expression—WISC?—it think it was an acronym for some group?

Mr. BERGSTROM. WISC—W-I-S-C, Washington Interreligious Staff Council.

Mr. DANIELSON. OK. The record will now reflect that.

Mr. BERGSTROM. It's an ecumenical agency.

Mr. DANIELSON. That's what I thought, I just didn't know what it meant.

The gentleman from California, Mr. Moorhead?

Mr. MOORHEAD. One area in this legislation that you indicated is of your greatest concern, has also been of great concern to our committee; this is the requirement that groups list their major contributors when they happen to reach the threshold and become a lobbying organization.

We took that requirement out of the legislation last year in subcommittee, but there is great pressure to put it back in again this year.

Can you tell me how this requirement would affect the Lutheran Church and other churches that are involved in your group?

Mr. BERGSTROM. I think most denominations—I can certainly speak for Lutherans—receive contributions from individuals in our congregations; and that is generally true in whatever districts and national church bodies that handle these funds.

And eventually a portion of that, a small portion in the total budget, would come in to my office. And I am not sure how we would be able to tell what part of that contribution we would have to report, first of all.

Second, I am not sure that it would be right for us to reveal these contributors; some of those people might not want to have it known about their contributions going to particular causes in the church. That's another concern. Unpopular——

Mr. MOORHEAD. That might throw a wet blanket on giving?

Mr. BERGSTROM. Yes, I think it could.

More than that, I am concerned about any chilling of the response to government.

Mr. MOORHEAD. I understand that one of the suggestions this year is that unless the lobbying expenditure meet a certain percentage of your income, there wouldn't be a disclosure requirement. And it would seem to me that through such a means Lutherans would be pretty safe; but perhaps the Seventh Day Adventists might be hurt far more. Perhaps some of the smaller groups, that are not quite as numerous, might be out of business.

Mr. BERGSTROM. Yes, sir.

I thought you were saying weren't as good givers? [Laughter.]

Mr. MOORHEAD. No, I think a large percentage of your money isn't spent on lobbying purposes.

Mr. BERGSTROM. Right. When I re-read the legislation and I think there are some of the proposals that would be very acceptable; I guess our concern is when it gets on the floor of the House amendments might be added again, as they were last year—not the ones you talk about, but those that might be brought up on the floor; and it would come back to a more narrow definition of the amounts that would be involved.

Mr. MOORHEAD. The other problem area, of course, in this Legislation is that, you could be required to record any letters or mail you sent to your parishoners, or from your Washington office to the various churches throughout the country, asking them to be concerned with specific issues coming up, and encouraging a letter-writing campaign.

How would this adversely affect you? Or would it?

Mr. BERGSTROM. Yes, it would.

We have two secretaries in my office, for instance, and we keep them busy now with a heavy burden. It is also difficult to do, to differentiate, Mr. Moorhead, between all kinds of requests we get from them. Most of our time is spent responding to what funds are available if I adopt a handicapped child, and those kind of questions.

Mr. Kindness; because the whole bill gives me the same kind of concern.

Again, I think Mr. Lynn in his paper has reference to that particular area. I am in support of your position.

Mr. KINDNESS. You feel more comfortable about the legislation if there weren't criminal penalties?

Mr. BERGSTROM. Yes.

Mr. KINDNESS. Thank you, sir.

Mr. DANIELSON. I have one question only: in your response to Mr. Moorhead, there was a question and answer in which the term "having a wet blanket on giving" came up. Early in your presentation you mentioned that on reporting contributions, your contributions have their roots in the parishoners who make their donation of one kind or another to the church, which in turn passes some on to the district, which in turn passes some on to the synod or other national organization.

And then a little bit of that may reach your office?

Mr. BERGSTROM. Yes.

I work for four Lutheran Church bodies, and I receive from each of the four.

Mr. DANIELSON. Well, suppose contributions under a similar structure would not have to go back all the way to the parishoner. Actually, I don't think there is any way that you can state from whom your money was received, except that it came from the synod or other organization, which I guess under our bill would be the lobbying organization, and you would be the agent doing the lobbying.

What I have in mind is if the mass contributions are from the mass of the people, the congregations, filtered up through this three-or-four-level-process, it might be possible to have the provisions of the bill such as there is really not any disclosure of where the money came from in the first place. It would go back one or two steps. There is an absolute gift at each level.

Individuals don't have to do any reporting under this proposed bill.

Mr. BERGSTROM. I guess the difficulty for us would be to estimate or prorate.

Mr. DANIELSON. You have made your point, and I am aware of it; and we will try to keep that in our thinking. Thank you very much.

I know, Mr. Lynn, you are the person who is really in a hurry, so why don't you just proceed?

Mr. LYNN. Thank you very much.

I can't speak for all members of the United Church of Christ, either particularly since Mr. Railsback, whose proposal causes me the greatest anxiety, is a very active member of the UCC Church in Illinois.

However, I do find and our Board of Directors has found the proposals presented under discussion today, proposes serious constitutional and practical difficulties with H.R. 2302, Mr. Kindness' proposal presenting far fewer for us.

All of them would seriously impede the kind of work which offices like ours try to accomplish in the area of social justice, and would discourage advocacy by small citizens groups, so as to leave

the whole lobbying arena open principally to giant, multimillion dollar lobbying organizations.

We feel that this kind of legislation has a disparate impact on small groups.

On the constitutional questions, for us, historically, the United Church of Christ and many other American religious bodies and denominations have felt compelled to speak to government about the formulation of public policy. It is a crucial part of the ministry of the church, and is for us part of the free exercise of religion which is protected by the first amendment.

The third circuit and even the Supreme Court has noted in many cases that public advocacy does fall within the protection of the free exercise clause.

The Office for Church in Society, for which I work, and many other religious groups, do in fact engage in lobbying communications as they are defined in presently proposed legislation. Yet, that advocacy is very clearly and totally a part of the ministry of our churches.

The first amendment to the Constitution prohibits interference with the exercise of religion, and it is clear to me from constitutional history that aside from protecting speech generally, the framers of the Constitution wanted to make sure that religion could be exercised, not merely pondered without restraint.

Some restrictions on the practice of religion are constitutionally permissible. But in 1963 in the case of *Sherbert* v. *Verner,* the Supreme Court readjusted its previous thinking on the relationship between religious freedom and any legislation which arguably impeded it; and created in this area for more exacting standard than had been previously stated by the Supreme Court.

In 1972 the case of Amish parents who refused to send their children to public high schools reached the Supreme Court in *Wisconsin* v. *Yoder.* There the *Sherbert* standard was even more clearly defined:

> The essence of all that has been said or written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

The *Yoder* case, to me, is extremely important as a clarification that legislation which interferes with the exercise of religious beliefs must deal with a compelling government interest, one associated with public health, safety or order, and must represent the least restrictive means to accomplish that interest.

It appears that a higher standard than in other first amendment contexts is assumed by the *Yoder* analysis. Justice Burger makes it consistently clear that the guiding fact in his decision is the ultimately religious nature of the claim. He indicates:

> Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority . . . their claims would not rest on a religious basis.

and could therefore be outweighed by the public interest in universal high school education.

Surely, if the Amish had merely asserted a non-religious free assembly or right to associate claim this case would not have been decided in their behalf.

I think a similar analysis occurs after Yoder in religious contribution solicitation cases.

For example, a statute prohibiting solicitation in the French Quarter of New Orleans was declared unconstitutional as applied to plaintiff-members of the Hare Krishna religious group.

Here the court implied that although commercial or nonreligious solicitation might still be banned, the clearly religious activity of chanting and proselytizing by the Krishnas, even though accompanied by fund solicitation, could not be abridged even in this one small area of the city.

To me what these cases do in the lobby disclosure context is to indicate that the free exercise clause is not merely an appendage to the right to petition, but forms an integral, separate ground for evaluating the intrusiveness of Federal action.

It is dubious to me that any of the yet-accumulated evidence indicates that there is a danger to the public health, safety or order from lobbying by churches, or anyone else. It is an extraordinary departure from traditional practice to create a kind of statutory right to know about the private activities of organizations which choose to communicate with government.

H.R. 81 and H.R. 1979 in particular represent unparalleled intrusions into the work of religious organizations. A constitutional question arises, of course, not only when a religious practice is prohibited, but also when it is burdened in some significant way.

I would like to just list very briefly some of the burdens from a proposal like 1979, to demonstrate that what I am talking about is not a speculative or a minimal obstruction to the work that we do.

First, within 30 days of the end of a quarter a detailed report must be filed with the Comptroller General. Several of the items are monumentally impractical.

Section 6b(2) requires reporting total expenditures related to lobbying activities; and given the very broad definition of expenditure: mailing, printing, telephone, consultant fees, or the like, there is a requirement that any lobbying organization undertake the herculean task of prorating postage meters, printing costs, long-distance and local-telephone calls, and possibly even general office overhead to determine what was spent on lobbying and what was spent on everything else.

Section 6b(7) represents an invasive proposal with very frightening implication to churches, written communications, and the so-called solicitations section, which requests that other persons become advocates on particular public policy issues—1979 is drafted so a communication on a policy matter to as few as 12 local UCC churches, 12 affiliates, subjects us to the requirements of this section.

Our religious literature is to us a private matter. And our communications with our members, be they 1 or 1,000, is not a proper area for governmental surveillance or monitoring of any kind.

Section 6(c), the contributor disclosure provision, I think has been discussed.

To us the internal financial contributions of churches may not in a literal sense be sacred; but I think that the Congress of the United States should consider those internal contributions at all levels to be inviolable.

In addition—second, in addition to all the reportable items, records are required by section 5 which presumably must be even

more detailed, presumably to buttress the figures in the reports when they are challenged by the Comptroller General or the Justice Department.

And I can envision vast recordkeeping beyond those items that need physically to be reported.

There are two other areas of a bill like H.R. 1979 which are not as readily quantified in their obstruction to our work, but which still represent a great chill for religious bodies in particular.

First, section 8 on enforcement provides a virtually standardless, carte blanche for Federal harrassment of any or all unpopular advocacy groups. I maintain that in its present it presents broader investigative powers against lobbyists than is held today by the FBI to track down Presidential assassins.

Presumably a single Member of Congress could complain to the Comptroller General about an organization's alleged noncompliance with the lobby disclosure bill, and thus begin a chilling chain of events:

Presumably the entire panoply of investigative techniques available to the Justice Department could be used. Broad subpenas could undoubtedly be issued to compel disclosure of all private correspondence, to make sure that it didn't go to more than 11 churches at the same time; and the required disclosure of membership lists and every other kind of internal document.

All of these investigative techniques and possibilities of heavy penalties present a frightening arsenal. This bill alone, and much more, I am afraid of the regulations to follow, will become complex to a fault; they will frighten people away from the religious advocacy within local and State and even national religious groups.

Those of us in the churches I think know with what deliberate nature some Federal agencies like to watch us and disrupt our activities.

Documents released from the late and I think unlamented FBI Cointelpro program show that not only church bureaucrats like myself who find myself speaking on controversial issues, were observed; but also that informants in Chicago and southern Virginia actually infiltrated local churches and Sunday schools to take notes on sermons and speakers.

The last thing we need is one more massive investigative apparatus filled with excuses for overseeing our activities. And I fear that some of the proposals here present precisely that apparatus.

A second broad problem area: Section 501(c)(3) of the Internal Revenue Code prohibits such as churches who have tax exemptions thereunder from having a substantial part of their activities devoted to carrying on propaganda or otherwise attempting to influence legislation. The meaning of substantial has never been clarified by the Supreme Court; however, most commentators believe that the rule of thumb adopted by the sixth circuit of 5 percent being a permissible level, reflects current IRS policy.

Several Congresses ago, the substantial language was clarified for some groups by an amendment to the tax code which permits a covered organization with expenditures of up to $500,000 to expend up to 20 percent of its exempt purpose expenditures on lobbying.

However, churches are disqualified from such an exemption or election; and still live under the ambiguities of the substantial

language, but are acting under a good faith belief that we are in compliance with the tax law and that we in fact do not spend a substantial amount of our assets on lobbying activities.

If covered by a lobby regulation or disclosure bill a further chill sets in. What if the IRS on the basis of a filed lobby report begins to assert that we are violating the substantiality standard. We should not be asked to develop what amounts to evidence against ourselves when we now believe that we are in good faith compliance with the tax laws.

Since tax exemption is a survival issue for churches, any possibility or perceived possibility that lobby reports might lead to loss of exemption will surely frighten some religious groups away from their advocacy ministries.

Mr. DANIELSON. Sir, I am going to interrupt. We have a heavy schedule, and you informed staff you would take 5 minutes. You have taken more than 5 minutes.

Mr. LYNN. I am sorry.

Mr. DANIELSON. Your statement is included in the record. I don't want to cut you off, but in fairness to you, I must also be fair to the other witnesses.

Mr. LYNN. Absolutely, I appreciate it.

Mr. DANIELSON. Pursue your main points.

Mr. LYNN. It is essentially finished.

Mr. DANIELSON. If you were in the court of appeals you would enunciate your points quickly—I know, because they shorten the time. So would you enunciate your points quickly?

Mr. LYNN. All right.

The only remaining things besides the elimination of the totally objectionable sections, I would just suggest you look again at the framework of thresholds.

I strongly endorse Mr. Kindness' proposal for a wholesale exemption; I think the enforcement provisions just need to have some standard connected with them; and a deletion of criminal penalties; and, finally, that information revealed through a lobby disclosure bill should not serve as the basis certainly for a prima facie determination by the Internal Revenue Service that we are or are not a tax-exempt organization.

I think if those things were changed, we would find this bill practical and constitutional.

Mr. DANIELSON. I thank you for a very able presentation.

Mr. Moorhead, of California?

Mr. MOORHEAD. I partially asked this question before. I think one of our concerns is that we not totally chill contributions to groups who might advocate causes that aren't tremendously popular, or ones which are very controversial.

One comes to mind, the National Rifle Association; a lot of people like to shoot it down whenever they can. [Laughter.]

But if we required that contributions be reported, would we not be discouraging unpopular groups or groups without general acceptance from receiving the contributions they now receive?

Mr. LYNN. I absolutely believe that.

I think it's true even on an organizational level, I mean, as the House floor considered this matter last year, they had an organizational contributor provision; if an organization gave to a reporting

organization $3,000 or more—but even that I think represents the possibility of some chill setting in. Because some small percentage of that money will be ending up in the coffers of an organization that does do lobbying as it is defined in the bill.

There are denominations, by the way, that are generally considered to have the majority of its members gay—the Metropolitan Community Churches, for example; and, of course, they are terrified at the possibility that their individual contributors, or even their corporate contributors, would be disclosed; because they are engaged in what is, I would say, a highly, highly unpopular cause and belief.

Mr. MOORHEAD. We have talked about the effect on church groups; are there not other groups, such as newspapers, that have more than one first amendment right involved, and could be caught in the trap?

Mr. LYNN. I believe so.

I believe the press associations could make in some sense a very similar argument. I believe the freedom of the press is specifically mentioned by the first amendment because there is a possibility there that a higher or separate standard should be reached whenever there is a chill on press freedom.

Mr. MOORHEAD. Has your organization done any estimates of the cost of complying with H.R. 81 or H.R. 1979?

Mr. LYNN. I attempted to get our staff to try to comply with the proposals that had passed the House floor for 1 week, so that we could do that; and we found that after the people had done it for about 2 days, it became so impractical that they just could not in good faith make the estimates required.

So we never got a cost figure. And I was lucky to get out of the office alive after just 2 days of going through with it.

It is very difficult. I mean, constitutionality aside, I just implore the committee to consider the practical problems that this generates, not only in cost of money but in cost of time as well.

Mr. MOORHEAD. Would the contributor disclosure be less offensive to you if the bill contained language requiring the contribution be directly tied to lobbying efforts of organizations, as opposed to a general expression of support for the purposes of the organization?

Mr. LYNN. That would make me much more comfortable, and I think it would make a sizeable improvement in the legislation; if the money was substantially spent on lobbying rather than this way, and it filters down, and only a small percentage might go for lobbying.

Mr. MOORHEAD. I want you to know the members of this committee are concerned with these same things you are and we only want reasonable disclosure legislation.

Mr. BERGSTROM. I think my concern is what might happen on the floor; that's why we may have overstressed this this morning.

Mr. DANIELSON. Mr. Hughes of New Jersey?

Mr. HUGHES. Yes, thank you, Mr. Chairman.

Mr. Lynn, I gather from your testimony on page 8 of your statement that you have some basic misgivings as to the need for the legislation at all?

Mr. LYNN. I do. I have fundamental questions as to whether at the cost of $1.6 million a year the public will in fact gain that much from this legislation.

We know when I am on the other side of an issue like gun control, where we have the forces of the National Rifle Association on the opposite side of where the United Churches' official position on the issue is, I know they spend a lot of money.

If I knew exactly how much they spent, I don't think it would help my advocacy efforts. I might use that figure in speeches sometime, but I don't think it would have—help me, benefit me.

And I am not sure that the public is terribly concerned about it, either.

They assume that large companies expend large amounts of money. If they knew it down to the penny, I don't think it would help us significantly.

Mr. HUGHES. Well, you question the premise that there is any relationship of any significance between spending money and lobbying activities?

Mr. LYNN. I think that improper conduct ought to be regulated on an entirely different basis. Bribery laws should be strictly enforced. Certainly no one is going to report illicit activities in a lobby disclosure bill. I don't think that that's really the intent of it.

I think that illegal activities, bribery and such, can be handled under presently existing criminal laws; and that that is something that perhaps the committee on recodification of the criminal code ought to consider very seriously.

Mr. HUGHES. You seriously question whether or not increasing our capability of knowing who is spending how much on various lobbying activities is going to work in the public interest?

Mr. LYNN. I do have reservations about that.

Our Board has had reservations about that. I think that we are more concerned about is that this proposal has precisely the opposite effect; that is, it becomes such a burden on the smaller groups that it knocks some of them out of the scene completely, and leaves the arena to the large multimillion dollar corporations and organizations on one side—left or right, progressives or conservatives. The big ones will survive; the small advocacy groups, religious or secular, will be knocked out of the arena.

Mr. HUGHES. Am I correct in just assuming from your statement that even though you suggested certain areas that could be improved significantly to make the legislation acceptable, as a practical matter you would prefer to have no legislation.

Mr. LYNN. I do not think the Republic would die or fall if we didn't have any legislation.

I think we are willing, certainly our Board is willing, to believe that it is possible to write disclosure legislation or change the present statute in such a way that it will protect these principles.

Mr. HUGHES. The reason I suggest that is you make the statement at one point that one must seriously question whether it is likely that knowing how much one spends on lobbying will result in any significant changes in the way Government or large organizations function.

Mr. LYNN. I think there is serious doubt as to whether——

Mr. HUGHES. In other words, you have a fundamental disagreement with the thrust of the legislation?

Mr. LYNN. Yes. I must admit that I do. I do have a fundamental problem.

I think that as the reports are coming out about State lobbying activities and lobby disclosure provisions, although the jury isn't in on the question, it certainly appears that there has not been a tremendous difference in the practices of lobbyists in the State of California or in the State of Maryland and other places that have lobby disclosure State laws.

Mr. HUGHES. Do you generally believe that the public interest requires we have some idea of where significant sums of money are being spent to influence legislation?

Mr. LYNN. In a general sense and certainly expenditures made directly to Federal officers or officials.

In some of the more detailed proposals here I talk about redefining expenditure. I think it's important perhaps to know when large amounts of money are spent on dinner for a Member of Congress. If $35 or more in gifts are given to Members of Congress—I think it's reasonable to ask that that be reported.

What I think is not reasonable is the wealth of detail that these proposals require.

Mr. HUGHES. You are getting into the bribery area?

Mr. LYNN. Well, I don't fully follow or understand in detail all the congressional ethics legislation; but I think that certain kinds of expenditures of $35 can be made and still be not unethical practice for the Member to accept or for a person to give it.

Mr. DANIELSON. Thank you, Mr. Hughes.

Mr. McClory?

Mr. MCCLORY. The subject you were talking about, of course, is ethics in Government; and that's something that's already covered in existing legislation.

Mr. LYNN. Yes.

Mr. MCCLORY. Now, since you made reference to the fact that there are two first amendment rights involving religious organizations, you feel there should be exemptions which are available to religious organizations so their lobbying would not be covered? Whereas, the other special interest lobbying would be?

Mr. LYNN. Although I think a very credible constitutional case can be made for exemption, and I believe you will hear some of that presented later, that is not the position of our Board; no.

We just believe that if the standard is high enough, that the bill is reasonable enough, that we will have our free exercise right of protection.

Mr. MCCLORY. Actually, we've heard an awful lot about the special interests, and the distinction is made between special interest lobbying and public interest lobbying—I would say even though I am the brunt of a lot of the NRA lobbying, that they think they are espousing a public interest position.

Do you not feel that there is always a special interest or a private interest or an individual interest involved, whether it is lobbying by a religious organization or a business corporation that is trying to advance legislation?

Mr. LYNN. I fundamentally agree with you. I don't know if it's in every case.

I know when we advocate something in the area of civil rights, although it does not affect us personally, or our churches personally, it certainly affects individuals and their special needs or interest. So to that extent, I think special interest and public interest distinction does not hold up very well.

Mr. MCCLORY. We struggled in the last Congress, and we may be struggling again on the subject, of listing in reports contributors. This is a special problem when we get into this subject vis a vis religious organizations.

Last year, the House made a distinction between individual contributors, where it would be highly offensive to almost everyone who contributes any substantial amount to a religious group, and retained a provision that organizations that contribute would have to be included in the reports.

Do you see any reason for that?

Mr. LYNN. I see real problems with it, as it was passed last year.

If an organization like the United Church of Christ with the broad definition of expenditure happened sometime on a national basis to spend one percent of its resources on what is broadly labeled lobbying, then every organization, every church that gives $3,000 or more to the national mission of the church, would have to be—presumably report that, or we would report that on their behalf; and it would be published somewhere.

And I think that that is intrusiveness that doesn't get us anywhere. And I think that some of the same problems might arise, for example, with corporate farms, family farms that have been incorporated that might give funds—I can just envision lots of difficulties even with a corporate contributor provision.

I just don't think it gains us that much to have it, frankly; although it could be drafted somewhat better.

Mr. MCCLORY. Church organizations engage in lobbying, they register under existing laws; don't they?

Mr. LYNN. Only if they meet the principal purposes tests under the present legislation. So some, a few, do; many do not.

Mr. MCCLORY. I have nothing further.

Mr. DANIELSON. Mr. Harris of Virginia?

Mr. HARRIS. Thank you, Mr. Chairman.

I want to apologize for not hearing all the testimony; I did get a chance to read it.

I am particularly interested in the church's position on this. I know once we get into discussion of this legislation we often sort of go over on to reporting requirements, almost automatically; and when I hear the testimony it seems to me like we are more onto threshold requirements than we are on to reporting requirements.

I can basically buy the case that if somebody is conducting a very large lobbying operation, for example on natural gas, the reporting ought to be at least accurate enough to know something about the characteristics and profile of that organization.

But so far as your mind is concerned, would you not think a law that properly stated the threshold so as not to include the smaller operation, would be sufficient as a solution, so far as you are concerned?

Mr. LYNN. It would be a sizeable part of the solution. But I think there are questions then that might get raised if that threshold is a dollar figure as to how many records does an organization need to keep in order to figure out whether it is past the threshold; and that becomes a possible problem if you are talking about a purely dollar threshold.

One of the things I think the committee might consider is some kind of threshold involving the total budget of the lobbying organization and the percentage of time that people use or spend on actual, direct lobbying.

Something like that I think might make it easier for an organization to figure out when it passes the threshold.

Mr. HARRIS. Have you looked at Mr. Mazzoli's bill?

Mr. LYNN. I have. I do not know, Mr. Mazzoli—I apologize—for not knowing it in as much detail as I know the other proposals.

Mr. HARRIS. The bill that passed the House last year of course was not just a dollar threshold so far as internal operations was concerned, it had to do with amounts of staff, amount of time that was put in on lobbying.

Mr. LYNN. The 13-days provision?

Mr. HARRIS. Yes.

Presumably the dollar figure is not the only type of threshold you could use. Presumably if the threshold was drawn correctly, if an operation was well below the threshold there would be no recordkeeping requirement to find out if it were over the threshold.

So I am just wondering why if you did properly draw the threshold, and it didn't include all operations, if that wouldn't solve your problem, or the major part of your problem? You are not that worried about a $300 million lobbying effort on natural gas going unreported?

Mr. LYNN. I think there are still possibly constitutional issues involved, not free exercise issues, since we don't expend anything like that.

I guess I would have to see it very specifically to know what I think there are other general rights of petition constitutional problems. But it would exclude—the high threshold would exclude virtually every religious organization, and virtually every small public interest group in the country.

And to that extent I think it is politically unpopular, but I think it is eminently reasonable in terms of public policy and what the public needs to know.

Mr. HARRIS. I actually understand from your answer that a high threshold doesn't cure your problem with the bill. You feel there are fundamental constitutional problems with regard to lobbying registration which can't be cured by high threshold?

Mr. LYNN. Well, I personally will always have some difficulties with any bill, no matter how high the threshold, if it contains, for example, contributor disclosure, or grass roots coverage.

I agree with Mr. Landau from the American Civil Liberties Union that any coverage of those activities raises serious separate constitutional issues.

Mr. DANIELSON. The time of the gentleman has expired.

Mr. HARRIS. I have just one more question——

Mr. DANIELSON. This is fast-moving time.

Mr. HARRIS. I think Mr. Bergstrom wanted to add something?

Mr. DANIELSON. Certainly.

Mr. BERGSTROM. Just a quick response——

Mr. DANIELSON. We have 58 minutes on two witnesses now. We still have some ten witnesses to go, and we have only 45 minutes.

Mr. BERGSTROM. You are very generous and kind.

Mr. Harris is my Congressman, and I just want to respond quickly.

First of all, it relates back to Mr. Hughes' question. I can only answer personally that I do not know the value of the bill, and I do not, as I indicated, do not see it; but that's a judgment call, where you said you may see much need for that.

I am under the impression that you do have that information. You know, most of those large groups, you know about. That's from our viewpoint.

The threshold question I think would satisfy me in terms of the churches' responsibility here; but again, I am not sure that's the best for everyone else. I think if you can in with $250,000 to $500,000 a year, it would seem to me anybody who spent much more than that might need that kind of information back to you.

But we just have to respond personally.

Another point is I do see a difference in what the churches are trying to do, Mr. Danielson, and the lobbyist who is here to get money or legislation which is going to benefit his company or him personally.

We hope that we are doing advocacy work for poor people who——

Mr. DANIELSON. Sir, I heard you say that, and you made that point; and to my profound regret, I must cut you off.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Lynn, you mentioned in your testimony that you would go further than section 12 of H.R. 2302 with respect to removing the information that would be filed under this legislation from use by IRS in any manner to effect 501(c) or other related sections of the IRS code exemption status. Do you have any specific ideas as to how to further insulate that connection, because I am not entirely satisfied with what is in my bill, either, in practical terms.

All it says is that the organizations will not be denied the exemption based solely of that information. But, in practical terms IRS could still actually use that information, at least as an investigative tool.

Mr. LYNN. I think I would be happy if they couldn't use it at all, as a principle or as any part of the evidence to be generated. I think the IRS is having an extraordinarily exciting time over there, regulating 501(c)(3) activities; and I'd prefer to see them not have the reports here, because they so broadly define expenditure and so on it should not be used.

Let them use the techniques which they now have and which I frankly feel they sometimes abuse already. Let's not give them another way to—frankly, I think to—harrass the 501(c)(3) organizations.

Mr. KINDNESS. In other words, in order to respond to that adequately, we would be called upon to include some provision that

would exclude that information from the administrative process as well as any judicial proceedings that might be carried on pursuant to the application of this section for the internal revenue code?

Mr. LYNN. I think that would be my—I am not sure, once it gets to the stage of judicial review that one could exclude this. You have to clean up certain discovery provisions and it gets, in my mind, very technical.

I would be happy to try to draft something for you that would get in that direction, and suggest it to you.

Mr. KINDNESS. Let me just say I would be interested in your thoughts on that, because I am not satisfied that this bill adequately deals with that problem.

Mr. DANIELSON. Thank you, Mr. Kindness.

Mr. Hughes of New Jersey?

Mr. HUGHES. I have already had my turn.

Mr. DANIELSON. Thank you.

Mr. Barnes of Maryland?

Mr. BARNES. I have no questions, Mr. Chairman.

Mr. DANIELSON. Thank you.

One question only of Mr. Lynn: You are an attorney as well as a minister, are you not?

Mr. LYNN. Yes, sir.

Mr. DANIELSON. All right, I'd better have that show on the record. I made a comment a while back about your being in court a number of times. [Laughter.]

Thank you very much.

[The full statement follows:]

SUMMARY: TESTIMONY OF BARRY W. LYNN CONCERNING LOBBY REGULATION

I. Legislation to regulate "lobbying" may violate the First Amendment's prohibition against interference with the "free exercise" of religion, since advocacy of public policy is a critical part of the ministry of the United Church of Christ.

A. Since *Wisconsin* v. *Yoder*, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion".

1. There is a more exacting standard than in other First Amendment contexts.

2. It is questionable that there is today a compelling reason to subject lobbying to the level of scrutiny in H.R. 1979, H.R. 81, or H.R. 2497.

3. There are certainly alternative and less burdensome ways to monitor lobbying. H.R. 2302, although not without problems, is more reasonable.

II. Taken as a whole, a proposal like H.R. 1979 presents considerable burdens on our work and diverts scarce time and financial resources:

A. Reporting requirements are too complex and impractical. Organizational contributor and grass-roots solicitation provisions should be eliminated. The definition of "expenditure" should not include mailing, printing, telephone, or overhead costs.

B. Even more records will need to be kept to buttress reported expenditures, generating a massive paperwork problem.

C. The virtually standardless enforcement provisions invite harrassment of religious groups involved in unpopular causes. Elimination of criminal sanctions, a "reasonable suspicion" standard, and limits on discovery are essential.

D. Due to inability of religious organizations to elect under § 4911(c) of the Internal Revenue Code, a kind of "self-incrimination" problem emerges if lobbying reports may be used to revoke or deny tax-exempt status.

III. Conclusion: Given the wide range of groups which honestly believe that the more restrictive lobbying bills will impede their advocacy efforts, Congress should seriously consider whether it wants to risk that we are right and thus cut off important avenues to public participation in governmental decisions.

Testimony of the Rev. Barry W. Lynn

Mr. Danielson and members of the committee, My name is Barry W. Lynn. I am presently serving as legislative counsel for the Office for Church in Society of the United Church of Christ. I am an ordained minister in the United Church of Christ and a member of the District of Columbia bar. I write and speak frequently on church/state problems and civil liberties.

The Office for Church in Society is an instrumentality of the 1.8 million members denomination, the United Church of Christ. I do not claim to speak for all those members, however. We are engaged in education and action on a broad range of issues of social justice. The Directorate of the Office for Church in Society, which is the agency most affected by proposals to regulate lobbying, has however adopted a position on this matter which acknowledges the possibility of reform of the lobbying statute but cautions against any infringements upon Constitutional rights, particularly the "free exercise" of religion guaranteed by the First Amendment. We are clear that the First Amendment rights of all individuals and groups must always be vigorously preserved.

I find all of the proposals before this subcommittee—H.R. 81, H.R. H.R. 1979, H.R. 2302, and H.R. 2497—posing Constitutional and practical difficulties. However, H.R. 2302 presents far fewer. They would seriously impede the work which offices like ours attempt to accomplish and would discourage advocacy by small citizen's groups so as to leave the "lobbying" arena open principally to giant multi-million dollar lobbying enterprises. It is critical to recognize that big lobbies—be they the American Medical Association, Lockheed, or Common Cause—will find these bills far less difficult to comply with than active, but modest-sized organizations. The large groups (often accompanied by sophisticated computerization) with some, if not an abundance of, excess capital, will be able to hire additional lawyers, accountants, and secretaries to do the paperwork these bill in fact require. Many of the rest of us are not so fortunate. There is no excess money in our budgets to do the paperwork and there is no excess time in our schedules to accomplish it either. Lobby regulation represents an example of the principle of disparate effect on small organizations. There will be, for example, high start-up costs to change the functioning of an organization like ours so that reporting can be accurate.

My principal purpose today is to focus on three areas: (1) how proposals to regulate lobbying impinge upon the "free exercise" clause of the First Amendment and the high Constitutional standards which must be met given that interference, (2) practical difficulties religious organizations will encounter in attempting to comply with the proposals presently under consideration, and (3) suggested substantive changes from the bills adopted by the House or the House Judiciary Committee last year. I will not review the general Constitutional arguments on the "right to petition" presented so carefully last week by David E. Landau of the American Civil Liberties Union, although I am in agreement with his analysis.

I. LOBBYING REFORM AND THE "FREE EXERCISE" CLAUSE

Historically, the United Church of Christ, its predecessor denominations, and many other religious bodies and denominations have felt compelled to speak to the Government about the formulation of public policy and to criticize governmental actions which fall short of perceived ethical norms. It is a crucial part of the prophetic ministry of the Church. Several years ago the Governing Board of the National Council of Churches articulated this view in relation to a resolution on "Tax Policy and Action in the Public Interest":

Many of our member churches believe that Christians are obligated by their faith to make Christ the Lord of all aspects of their lives, and that public policy is not an exception to that obligation. We affirm that speaking out on public issues can be, and for us is, part of the "free exercise of religion" protected by the First Amendment.

There has been some judicial recognition of this element of religious freedom. In 1941 a religious body advocating prohibition got into tax difficulties because they testified before the New York legislature. The court rejected the view that this was per se violative of tax-exempt status:

Religion includes a way of life as well as beliefs upon the nature of the world and the admonitions to be "Doers of the Word and not hearers only" (James 1:22) and "Go ye therefore, and teach all nations . . ." (Matthew 28:19) are as old as the Christian Church. The step from acceptance by the believer to his seeking to influence others in the same direction is a perfectly natural one, and it is found in countless religious groups. The next step, equally natural, is to secure the sanction of organized society for or against outward practices thought to be essential. The advocacy of such regulation (prohibition) before party committees and legislative bodies is a part of the achievement of the desired result in a democracy. The

safeguards against its undue extension lie in counter-pressures by groups who think differently and the constitutional protection, applied by courts, to check that which interferes with freedom of religion for any. *Girard Trust Company* v. *Commissioner* 122 F. 2d 108, 110 (3rd Cir., 1941).

Similarly, the Supreme Court also recognized the legitimacy of such advocacy in *Walz* v. *Tax Commissioner* 397 U.S. 664, 670 (1970): "Adherents of particular faiths and individual churches frequently take strong positions on public issues including . . . vigorous advocacy of legal or Constitutional positions. Of course, churches as much as secular bodies and private citizens have that right."

The Office for Church in Society and many other religious bodies do in fact engage in "lobbying communications" as they are defined in presently proposed legislation. We are mandated by the representative body of clergy and laypersons who established our existence, the Tenth General Synod, to be advocates in legislative bodies in support of the policies adopted by this denomination. It is clearly and unequivocably a part of the total ministry of the United Church of Christ.

It is important to note that the Government does not have the right to define the role of any church in the society; that definition is dependent solely on the Church's own values. *Walz* v. *N.Y. State Tax Commission* 397 U.S. 664 (1970). It is also not Constitutionally relevant whether the public policy advocacy dimension of our faith is theologically necessary or integral to the exercise of the faith; it is sufficient that the Church views it as "religious" activity (*See Unitarian Church West* v. *McConnell* 337 F. Supp. 1252 (E.D. Wisc., 1972)).

THE STATE OF "FREE EXERCISE" LAW

The First Amendment to the Constitution begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .". It is clear that aside from protecting speech generally, the Framers of the Constitution felt a need to explicitly guarantee that religion could be "exercised", not merely pondered, without restraint. Nevertheless, it soon became clear that some restrictions on the practice of religion were Constitutionally permissable. For example, the Supreme Court rejected an attack by Mormons on a state bigamy statute, indicating that although Congress (and the States) could not legislate religious beliefs, it must be "left free to reach actions which were in violation of social duties or subversive of good order." *Reynolds* v. *U.S.* 98 145, 164 (1878).

In the Twentieth Century the Supreme Court also found that "free exercise" claims could not negate compulsory smallpox vaccination (*Jacobsen* v. *Massachusetts* 197 U.S. 11 (1905)), child labor laws where Jehovah's Witnesses were having their children sell religious tracts in violation of those laws (*Prince* v. *Massachusetts* 321 U.S. 158 (1944)), and Sunday closing laws even though this meant that an Orthodox Jew would have to suffer the financial loss of closing for two days (*Braunfeld* v. *Brown* 366 U.S. 599 (1961)). In each case the court was satisfied that the legislation fostered some "legitimate state interest" and was therefore Constitutional even though it has the practical effect of infringing on the unbridled exercise of someone's religious faith.

In 1963, however, the Supreme Court readjusted its thinking on the relationship between religious freedom and legislation which arguably impeded it. A Seventh Day Adventist could not find a job which permitted her to have Saturdays free for worship. South Carolina refused to grant her unemployment compensation, arguing that if they permitted this claim for "religious" exemption from taking any job offered, fraudulent "religious" claimants who did not want to work on weekends would dilute the unemployment fund. The Court held: "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive Constitutional area, 'only gravest abuses, endangering paramount interests, give occasion for permissable limitations . . .'". The Court noted that even if some paramount state interest were shown, the state would also have to demonstrate that "no alternative forms of regulation would combat such abuses without infringing First Amendment rights" *Sherbert* v. *Verner* 374 U.S. 398 (1963). This was a far more exacting standard than previously articulated by the Court in this area.

By 1972, the case of Amish parents who refused to send their children to public high schools reached the Supreme Court, *Wisconsin* v. *Yoder* 406 U.S. 205 (1972). The *Sherbert* standard was even more clearly defined: "The essence of all that has been said or written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion" (*Yoder*, at 215). The Court indicated that although compulsory education was a worthy state interest, no harm "to the public safety, peace, order or welfare has been demonstrated or may be properly inferred" because of exempting Amish children from attending public high school.

The *Yoder* case is extremely important as acclarification that legislation which interferes with the exercise of religious beliefs must deal with a "compelling" governmental interest (i.e., one associated with public health, safety, order, or welfare) and must represent the least restrictive means to promote that interest.

The *Yoder* opinion does not explicitly indicate that the "free exercise" clause alone or in combination with other First Amendment claims elevates the Constitutional standard to be applied when legislation interferes with it. However, it appears that a higher standard than in other First Amendment contexts is assumed by the *Yoder* analysis. Justice Burger makes it consistently clear that the guiding fact in his decision is the ultimately "religious" nature of the claim. He indicates: "Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority . . . their claims would not rest on a religious basis" and could therefore be outweighed by the public interest in universal high school education (at 216). Surely, if the Amish had merely asserted a non-religious "free assembly" or "right to associate" claim this case would not have been decided in their behalf.

A similar analysis occurred after *Yoder* in religious contribution solicitation cases. For example a statute prohibiting solicitation in the French Quarter of New Orleans was declared unconstitutional as applied to plaintiff-members of the "Hare Krishna" religious group. *International Society for Krishna Consciousness* v. *New Orleans* 347 F. Supp 945 (D.C. La., 1972). Here the Court, by a long citation to the classic religious solicitation license fee case, *Murdock* v. *Pennsylvania* 319 U.S. 105 (1943), implied that although commercial or other non-religious solicitation might still be banned, the clearly religious activity of chanting and proselytizing by the Krishnas, even though accompanied by fund solicitation, could not be abridged even in this one small area of the city. See also: *Intern. Soc. For Krishna Consciousness* v. *Collins* 452 F. Sup. 1007 (1977) S.D. Tx., *Intern. Soc. For Krishna Consciousness* v. *Conlisk* 374 F. Supp. 1010 (N.D. Ill. 1973).

When the "free exercise" of religion forms the core reason for engaging in "speech-like" activities the standard the state must meet to justify a limitation is—and should be—of the highest order. In the lobby regulation context, I believe that the free exercise clause is not a mere appendage to the "right of petition" clause, but forms an integral separate ground for evaluating the intrusiveness of Federal action.

It is dubious that any of the yet-accumulated evidence shows lobbying to be a danger to the public health, safety, order, or welfare. Generally, reasons for this legislation boil down to proportedly giving Americans a "fuller understanding" of how issues are "influenced". Although this effort at public education may be admirable, it is highly unlikely that it is a sufficiently "compelling" reasons to infringe upon the exercise of religion. There is no Constitutional "right" to know even what the Government is doing internally. For that reason, the internal working papers of agencies are specifically exempt from disclosure even under the Freedom of Information Act. It is an extraordinary departure from traditional practice to create a kind of statutory "right to know" about the private activities of organizations which choose to communicate with the Government.

Obviously, though, there are other implicit reasons why this legislation is seen as desirable by some—to subject to public scrutiny massive (albeit legal) payments by lobbyists to Government employees, and to help prevent influence which is illegal. One must seriously question, though, whether it is likely that knowing how much is spent on lobbying could be expected to result in any significant changes in the way government or large organizations function. Similarly, it is naive to think that illegal influence would be recorded at all. Any criminal activity which may be going on now is not going to be stopped by a disclosure requirement any more than it is stopped by the present threat of penal sanctions.

II. THE LEVEL OF "FREE EXERCISE" INFRINGEMENTS IN PRESENT PROPOSALS

H.R. 81 and H.R. 1979 in particular represent unparalleled intrusions into the work of religious organizations. Certainly, these bills do not on their face prohibit any of the advocacy activities of religious bodies. However, it is basic Constitutional law that not only direct, but indirect abridgments of First Amendment rights are actionable. A Constitutional question arises not only when a religious practice is prohibited, but also when it is burdened in some significant way.

The recordkeeping and other requirements would be both time-consuming and expensive. Statutorily imposed administrative costs are, in essence, fiscal constraints on the right to engage in constitutionally protected activity. For example, the Supreme Court has rejected license taxes on religious solicitations of as little as $1.50 per day as unwarranted infringements upon "free exercise". *Murdock* v. *Pennsylvania* 319 U.S. 105 (1943).

Analogously, the Court has rejected government imposed filing fees on individuals seeking a divorce because of the government "monopoly" on dissolving marriages. *Boddie* v. *Connecticut* 401 U.S. 371 (1971). This case is arguably relevant because many of the ethical goals we seek as a Church may ultimately be achievable only through an alteration in government policy. We may, therefore, be financially burdened in our attempt to achieve those goals and thus have access to the only source of our goal-achievement impaired. This is constitutionally impermissible.

The following list of "burdens" from H.R. 1979 clearly demonstrates that I am not discussing a speculative or de minimus obstruction to our work: (1) Within 30 days of the end of a quarter, a detailed report must be filed with the Comptroller General. Several of the items are monumentally impractical or intrusive upon legitimate privacy interests of religious organizations:

Sec. 6(b)(2) requires reporting "total expenditures" related to lobbying activities. Given the broad definition of "expenditure" in Section 2(b)(A)(ii)—"mailing, printing, advertising, telephone, consultant fees, or the like" connected with lobbying—there is a requirement that a lobbying organization undertake the Herculan task of pro-rating postage meters, printing costs, long distance and local telephone calls, and possibly even general office overhead to determine what was spent on "lobbying" and what was spent on everything else we do. I can easily envision having to maintain separate postage meters, separate printing accountants, and even separate phone lines to ease the cost-allocation problem. Although I would assume that a mismatched postage stamp would not be subject for investigation, good faith compliance will still demand a careful allocation scheme, not estimates or formulae.

Sec. 6(b)(6) requires the "description" of issues concerning which the organization lobbied. A "description" is likely to entail a detailed analysis of the particular bill or amendments upon which work was done. Besides requiring time to produce such "descriptions", there is no justification for a demand that the strategy and tactics of organizations engaged in public advocacy be subject to such scrutiny. There is nothing illegal or immoral about an organization quietly working, for example to support particular amendments or legislative compromises; and no necessity that those tactical decision be broadcast on a quarterly basis.

Sec. 6(b)(7) represents a frighteningly invasive proposal. There, written communications—so-called "solicitations"—which request that other persons become advocates on particular public policy matters must be disclosed. We are unalterably opposed to having to make a choice between "describing" the issues we wrote our members about or "filing a copy of the solicitation". The bill is drafted so that a communication on a policy matter to as few as twelve local U.C.C. churches—"affiliates"—subject us to the requirements of this section. Our religious literature is a private matter. Our communications with our members—one a 1000—is not a proper area for governmental surveillance or monitoring of any type. It is inconceivable that courts would uphold the constitutionality of this section. *U.S.* v. *Harris* 347 U.S. 612 (1954), *U.S.* v. *Rumely* 345 U.S. 41 (1953).

Section 6(c) is another burdensome and offensive provision on contributor disclosure. Under it, if all the national offices of the United Church of Christ expended 1 percent of its budget on what this bill broadly defines as "lobbying", each local church which gave $3000 or more to the national mission of this denomination would have to be identified by name and address each year. (Some small percentage of those contributions would, for example, pay my salary to engage in public advocacy.) The internal financial contributions of churches may not be sacred in the literal sense, but they should be viewed as inviolable by the Congress of the United States. It is conceivable that this level of scrutiny of internal financial matters of a religious group could even run afoul of the First Amendment's "establishment" clause since one of prongs of such evaluation is whether legislation "entangles" the government in religious affairs. *Tilton* v. *Richardson* 403 U.S. 672 (1971). A high level of financial surveillance could be viewed as excessive entanglement.

Finally, Section 6(b)(5) requires the unpleasant choice of either allocating salaries or disclosing the full salaries of employees. The first will necessitate religious offices acting like law offices with 15-minute timed activity logs; the second goes beyond legitimate public information. I suspect most offices would, however, choose the latter to avoid the impossible.

(2) In addition to all the reporting required by the bill, Section 5 requires the retention of even more detailed records, presumably to buttress the figures in the reports when they are challenged by the Comptroller General or the Justice Department. There is small comfort in the clause that "the Comptroller General may not by rule or regulation require an organization to maintain or establish records (other than those records normally maintained by the organization) for the purpose of enabling him to determine whether such organization is required to register." Those of us who know we will be required to register see this section as an invitation for

the Comptroller General to write detailed regulations requiring specific, extensive record-keeping for reporting organizations. Keeping all records for five years, as Section 5(c) notes, also may prove to be an expensive storage problem. I am still unclear what is to happen to the records of ad-hoc organizations, or records for dissolved organizations, and who bears responsibility for their maintenance.

There are nightmarish possibilities for record-keeping. Long-distance phone bills will have to be labelled as to which calls went for "lobbying" and, on the other hand, those which were to order Bibles or call one's sick mother. Time—logs of when and where employees were will need to be created and retained in order to support reported contentions about salary expenditures attributable to "lobbying". Examples of similar problems abound.

Other sections of H.R. 1979 are not as readily quantified in their obstruction of our work, but have an equal or even greater chilling effect on our activities:

(1) Sec. 8 provides for a virtually standardless carte-blanche for federal harrassment of any or all unpopular advocacy groups. It grants broader investigative powers against "lobbyists" than that held today by the F.B.I. to track down Presidential assassins and white-slavers. Presumably, a single member of Congress could complain to the Comptroller General about an organization's alleged non-compliance with the "lobby disclosure" act and thus begin a chilling chain of events. The Comptroller General, upon the vague if not totally standardless determination of an "apparent" violation, could turn the matter over to the Attorney General (Section 7(a)(7)). The Attorney General would then "investigate" the "alleged violation", and need not even inform the alleged violator of the investigation if this night somehow "interfere with the effective enforcement of this Act" (Section 8(a)).

Presumably, the entire panoply of investigative techniques available to the Justice Department would be used. Broad subpoenas could undoubtedly be issued to compell disclosure of all private correspondence to make sure it didn't go to more than 11 churches at the same time and to require disclosure of membership lists and every other kind of internal documents.

Penalties of $10,000 civil fines and $10,000 criminal fines and two years imprisonment are possible results. It is particularly unclear whether the "knowingly violate" standard of Section 11(a) is intended to reflect a concerted and deliberate attempt by an organization to violate the law. More likely, it would cover the states of mind held when a group carelessly proceeds without a thorough understanding of its responsibilities under the law.

All these investigative techniques and possibilities of heavy penalties presents a frightening arsenal. This bill alone, much more the regulations likely to be promulgated under it, is complex to a fault. This is not a bill written to alter some corporate tax statute where the persons or groups covered are thoroughly trained in understanding the laws which affect them. This attempt to regulate lobbying affects unknown thousands of groups—ad-hoc or permanent, religious or secular, liberal or conservative—many of which have no access to the Federal Register to read the regulations or lawyers to interpret them. All many of these groups will know is that there is a "lobbying bill" with harsh fines if violated. That will be sufficient to snuff out their advocacy interest, which was often difficult to engender in the first place.

When I travel around this country I hear alot from people concerned about the government's over-interference in their lives. Those of us in the churches know how deliberately and viciously government agencies can act to watch us and disrupt our activities. Documents released from the late and unlamented F.B.I. Cointelpro program show that not only church bureaucrats like myself speaking on controversial issues were observed, but that informants in Chicago and southern Virginia infiltrated local churches and Sunday schools to take notes on sermons and speakers. The last thing we need is one more massive investigative apparatus filled with excuses for overseeing our activities. This bill would unfortunately present such an apparatus.

(2) Presently, Sec. 501(c)(3) of the Internal Revenue Code prohibits groups such as churches who have tax-exemptions thereunder from having a "substantial part" of their activities devoted to "carrying on propaganda, or otherwise attempting, to influence legislation . . ." The meaning of "substantial" has never been clarified by the Supreme Court, however most commentators believe that the rule of thumb adopted by the Sixth Circuit of five-percent being a permissable level reflects current I.R.S. policy. *Seasongood v. Commissioner* 227 F. 2d (6th Cir. 1955). Other Circuits, however, have found far less intervention to be "substantial". *Kuper* v. *Commissioner* 332 F. 2d 562 (3rd Cir. 1964).

Several Congresses ago, the "substantial" language was clarified for some groups by an amendment to Section 4911(c) of the Tax Code which, for example, permits a covered organization with expenditures of up to $500,000 to expend up to 20% of those exempt purpose expenditures on lobbying. However, churches, convertions of

churches, and their integrated auxiliaries are disqualified from such an election (Section 501(i)(5) (A) and (B)). We still live under the ambiguities of the "substantial" language, but are acting under a good faith belief that we do not expend "substantial" resources on influencing legislation.

If covered by a lobby regulation and disclosure bill, however, a further chill sets in. What if the I.R.S., on the basis of filed lobby reports, begins to assert that we are violating the "substantiality" standard? We should not be asked to develop "evidence" against ourselves when we now believe that we are in full compliance with the tax laws.

I.R.S. has lately developed an intriguing, to say nothing of unconstitutional, ruling which prohibits 501(c)(3) organizations from publishing certain forms of voting records which we have always assumed were perfectly legitimate voter education efforts (Revenue Ruling 78-248). One is tempted to believe that I.R.S. is looking for new ways to restrict the voices of all tax-exempt 501(c)(3) groups.

Since tax-exemption is a survival issue for churches, any possibility—or perceived possibility—that lobby reports might lead to loss of exemption will surely frighten some religious groups away from their advocacy ministries.

III. SUGGESTED CHANGES IN PENDING LEGISLATION

Given these problems, we obviously do not support H.R. 1979. Insofar as H.R. 81 or H.R. 2302 contain any of these same objectionable features, we do not support them either. However, the following elements of those bills and other possible changes could provide a bill which might pass Constitutional muster because it would be reasonable, practical, and relatively unintrusive, yet still provide information which "lobby disclosure" proponents think they need:

(1) Section 3's present low dollar threshold should be raised so as not to cast the coverage net so widely as to reach active but small one or two person offices. H.R. 2302's higher $5000 per quarter figure is preferable to the $2500 per quarter plus 13 day test of H.R. 1979. Under the thresholds of H.R. 81 and H.R. 1979 many statewide religious organizations and even some very active local churches will be covered. For the United Church of Christ this means that the Office for Church in Society or some other agency will have to go to the trouble to report for all our "affiliates" or they will have to do all the work themselves. The $5000 threshold is not a perfect solution, however, since large numbers of groups will need to generate records to find out if they have exceeded the $5000 limit. I would propose that a combination of the total budget of the organization and the total percentage of retainees' or employees' time expended in lobbying might form the framework for a more equitable and reasonable threshold.

(2) I strongly endorse Section 2(6)(c) of H.R. 2302. This seeks to exclude communications between an organization and these Senators and Representatives who represent the state in which the organization has its principal place of business. This would mean that, say, the Ohio Council of Churches could advocate policies with all the members of the Ohio Congressional delegation without having to worry about becoming a reporting organization. This is eminently reasonable.

(3) Enforcement provisions must be made subject to reasonable investigative standards. Those in H.R. 2302 are a significant improvement over other proposals. The deletion of criminal penalties and insertion of a "reasonable suspicion" standard, requiring the detailing of "specific facts and circumstances" which give rise to a "strong possibility" of activity in violation of the Act, is a great improvement. I would endorse, further, the general additional proposals for investigation and discovery expressed by the American Civil Liberties Union.

(4) We support the total deletion of all requirements for coverage of "solicitations" to our members and of all contributor disclosure.

(5) The definition of "expenditure" should be limited to payments made for the benefit of a Federal official and an approximation for costs of advertising, consultant fees and perhaps salaries or fees for retaining persons directly involved in lobbying. Overhead costs, mailing, telephones, and printing should not be included.

(6) Given the grave uncertainty surrounding the permissable levels of influencing the political process in § 501(c)(3) of the Internal Revenue Code, and our honest belief that we stay within reasonable limits, we urge that information revealed through any lobby regulation bill not be used as prima facia revocation of a tax-exemption or denial of such exemption. Given the breadth of definitions in H.R. 81 and H.R. 1979, I fear that the Internal Revenue Service may act precipitously in denying exemptions or revoking them on the basis of information in these reports. I would go further than Section 12 of H.R. 2302 so that "lobby disclosure" reports could form no basis for a tax-status determination.

(7) Reports should require a mere "listing" of bills around which the organization "lobbied". To require descriptions of specific advocacy efforts is both unnecessary and stifling of legitimate negotiation and compromise in the political arena.

(8) Finally, at a time when this nation faces the possibility of severe budgetary cutbacks, I have serious reservations about allocating $1.6 million yearly to have the Comptroller General summarize reports, cross-index records, and generally engage in an extraordinarily expensive process of paper-shuffling. Even if one assumes that further regulation of lobbying is desirable, surely a system can be devised which costs less than $1.6 million yearly. No doubt all this filing and cross-indexing will benefit at least one of the groups who now is most vigorously promoting this legislation—Common Cause—and who now expends considerable money and energies in sorting out this kind of information from other sources. However, a subsidy to the public relations efforts of a group, no matter how noble their intentions, hardly seems worth the taxpayers' dollars.

I honestly believe that what is at stake in this legislation is the very survival of many small offices who do advocacy work in this city and throughout the country. I recognize that the proliferation of citizens' groups creates increasing pressures on the schedules of already hard-working members of Congress and their staffs. I recognize as well that when groups in Washington are able to alert their members to pending or upcoming legislation, there is an increase in mail, calls, and telegrams. Yet the best decisions are made when the public has a chance to voice their opinion on legislation before a vote—not after they read the U.P.I. story in their local paper after a vote has already occurred. Groups that exist in Washington and elsewhere get information to their members, the public, when it is most needed. If I did not honestly believe that the more extensive "lobby regulation" proposals would curtail or eliminate these kinds of efforts, by diverting time and resources, I would not be here to plead my case—and, in some way the case of every other group in America.

The Congress takes a great risk if it acts in a way which stifles any legitimate advocacy work. Gaining access to the political system has been very difficult for many groups. I implore you not to put any more unnecessary obstacles in our paths.

Mr. DANIELSON. We will now call the second panel of witnesses from church groups, which will be Dr. James Wood, executive director of the Baptist Joint Committee on Public Affairs, and Dr. J. Elliott Corbett, United Methodist Division of Human Relations.

Gentlemen, please come forward.

Without objection I am going to have the gentlemen's statements appear in the record. Is there objection? Hearing none, it is so ordered.

Gentlemen, you are free but I would with great reluctance admonish you to make your points well and quickly, because we have splendid witnesses here, and we want to hear all; but with time constraints we see no other way.

TESTIMONY OF DR. JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, ACCOMPANIED BY DR. J. ELLIOTT CORBETT, UNITED METHODIST DIVISION OF HUMAN RELATIONS

Dr. WOOD. I will go first.

I am Dr. James Wood, executive director of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national Baptist bodies of the United States. They have a current membership of over 27 million.

Because of the congregational autonomy of individual Baptist churches we do not purport to speak for all Baptists.

However, the Baptist Joint Committee consistently has opposed throughout the years any lobby registration act which does not exclude churches from coverage and——

Mr. DANIELSON. I will have to admonish you, sir; I am going to have to close this panel at 11:30, 11 minutes from now. So enjoy yourself, whichever way you wish to proceed.

Dr. WOOD. Mr. Chairman, I am afraid we were misinformed and thereby misunderstood. We were told we had 10 minutes apiece; is that not correct?

Mr. DANIELSON. Well, I was not aware of that. But if you are told that, I certainly will not doubt your word, you will have 10 minutes apiece.

Dr. WOOD. Well, if we may.

Mr. DANIELSON. I must admonish the people from the latter groups that you are welcome to stay; but we will never get to you today.

Go ahead, sir.

Dr. WOOD. As a matter of fact, the Southern Baptist Convention, the largest Protestant denomination in the country, at its June 14, 1978 meeting, expressed without opposition, and I quote:

> Alarm over the potential threat to religious freedom inherent in proposed lobbying legislation calling for tighter governmental control over churches and not-for-profit-groups . . . and [urged the Baptist Joint Committee on Public Affairs] on their behalf to continue its steadfast opposition to such legislation.

Other national Baptist bodies hold similar positions. I am confident that this testimony today reflects the opinion of the vast majority of Baptists throughout the United States.

There is in fact an unusual degree of Baptist consensus on this matter.

The Federal Regulation of Lobbying Act of 1946, the various lobby registration bills considered by the 95th Congress, as well as H.R. 81, H.R. 1979 and similar pending bills—all of then we regard as sweeping, that is the 95th and 96th Congress proposals—as sweeping and unprecedented legislation for Government monitoring of advocacy groups; they all appear to rest on three premises.

One, the attempts by individuals or groups to influence the democratic or the direction which legislation takes or in some way inimical to the democratic process.

Two, that lobbying is not a right protected by the freedom of speech or indeed the right to petition clauses of the first amendment.

And, three, that the religion clauses of the first amendment do not further mandate that lobbying by religious groups be excluded from coverage by any legislation affecting lobbying activities.

These premises we believe are invalid. We categorically reject them and agree with Mr. Justice Jackson in his dissent in *United States* v. *Harriss* that the first amendment, and I quote:

> Confers a large immunity upon activities of persons, organizations, groups and classes to obtain what they think is due them from Government. Of course, their conflicting claims and propaganda are confusing, annoying and at times, no doubt, deceiving and corrupting. But we may not forget that our constitutional system is to allow the greatest freedom of access to Congress, so that people may press for their selfish interests, with Congress acting as arbiter of their demands and conflict.

We maintain that it is not the advocacy of ideas but the extension of personal favors and the use of personal funds by special interest groups which threaten the democratic process.

At a time when Congress has come under criticisms for being aloof from and unresponsive to the general public, it would seem

especially appropriate that Congress would seek at this time to expand the access of the general public to it rather than chill the desire to communicate or make the procedure for communicating prohibitively expensive and/or administratively burdensome.

The lobby groups which would be most chilled or muted by pending lobby disclosure bills are the public interest advocacy groups.

We submit that this legislation would impose a substantial burden on such public interest groups and the churches, that large special interests have the determination, manpower, and funds to continue their activities.

Also, tax laws which allow the writeoff of lobby costs as ordinary and necessary business expenses lessen the possibility that these special interest lobbies will in any way be chilled or muted in their communications with Congress.

Meanwhile the rights of freedom of speech and petition of Government as well as other fundamental rights of freedom of religion and freedom of the press are protected from most congressional intrusions by the first amendment.

Under the 14th amendment the same protections circumscribe State action.

This fundamental right may be limited by Congress or the States only if there is a compelling governmental interest which must be served, and if the proposed limitation is the least restrictive possible to serve that interest.

As Mr. Chief Justice Charles Evans Hughes declared, and I quote again:

> The maintenance of the opportunity for free political discussion to the end that Government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.

Lobbying of course involves both speech and petition and is, therefore, as recognized by the courts, an activity protected by the first amendment.

Every person or group engaged in trying to influence legislation is in fact exercising a right under this amendment. Similarly, the lobbyist's freedom to openly and appropriately communicate with Government about legislation is clearly assured, as recognized by the U.S. Supreme Court. Numerous citations are of course to be found in the printed text here.

The U.S. Supreme Court narrowly construed the Federal Regulation of Lobbying Act of 1946 in the case of *United States* v. *Harris* in a 5 to 3 decision—and in a 5 to 3 decision affirmed the constitutionality of the act as it applied to persons who solicit, collect, or receive money to attempt to influence legislation.

The Court in discussing pressures on Congress stated that the evil which the Lobbying Act was designed to help prevent was that of having the voice of the people drowned out by the voice of special interest groups seeking favored treatment.

Yet, H.R. 81, for example, and similar bills apply to special and public interest voices alike. The latter would be the first to be drowned out.

We suggest that if this is the result, freedom of speech and the right to petition will be infringed without the presence of a compelling State interest.

Thus, there are valid reasons for this subcommittee to fail to report this bill to the full committee on free speech and right to petition grounds. However, this is not the major thrust of our testimony, and this major concern—I now, of course, conclude with emphasis, focus, upon it—namely, that H.R. 81 and similar bills fail to exclude bona fide religious groups from coverage.

The first amendment does put religion and religious organizations in a unique category. Religious organizations are entitled to freedom of speech, to be sure, and the right of petition; plus they are guaranteed by that same constitution that Congress may make no law respecting an establishment of religion or interfering with the free exercise thereof.

The free exercise clause withdraws from legislative power, State and Federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority, as the court said in *Abington* v. *Schempp.*

What is the nexus between this free exercise of religion and lobbying by religious organizations?

The concept of religious liberty demands that churches, conventions, associations of churches, synagogues, temples, mosques—which I certainly want to include in the use of the term "churches"—must define for themselves the nature and scope of their religious mission.

Concomitantly, religious liberty denies to the State the power or the authority to define for the churches the nature and scope of their religious mission. Many if not most churches consider—as Mr. Lynn rightly said—that an integral part of their religious mission is the obligation to speak to Government in an attempt to influence or to give direction to the development of public policy.

Therefore, the State may not deny, we maintain, limit, or chill that religious activity short of the demonstration of a compelling State interest.

This has not been demonstrated, and we contend it cannot be demonstrated.

Nor may the State require that the church give up its right to this free exercise of religion under the first amendment to be eligible to gain a statutory privilege.

For Baptists and other similar organizations involvement of the church in public affairs is an inescapable responsibility of the church. For 40 years the Baptist Joint Committee has affirmed a Baptist witness in public affairs as indispensable to a free church and a free society, but also as the exercise of our right to religious liberty.

The church is bound to attempt to influence the formation of public policy because such an involvement is integral to the mission and ministry of the church.

It is essential to the faith and teachings of the church, in its divine obligation to society.

As such it is a constitutionally protected activity. It is therefore our contention that this legislation insofar as it applies to churches, abridges the free exercise of religion.

Since my time is up, if I may just make a concluding statement, Mr. Chairman.

We maintain that the role played by the church in attempting to influence public policy is religious and, that certainly, to regulate, to abridge this, raises very serious constitutional questions; and so this suggestion:

This exclusion of churches we believe can be accomplished by deleting 2(1)(b) or H.R. 81, for example, redesignating 3(b) as 3(b)(1), and adding a 3(b)(2) which would read, and I quote:

> This act shall not apply to those organization which are excepted from filing informational returns under section 6033(a)(2) of the Internal Revenue Code of 1954.

This wording would appear to satisfy the objections of the Baptist Joint Committee on Public Affairs, to H.R. 81 and others, except that our support of such wording should not be interpreted as an acceptance of the phrase "integrated auxiliaries" found of course in the code at 6033.

We do not presume that this specific wording necessarily reflects the thinking of other denominational groups and their thoughts should be solicited by this subcommittee, even beyond those of us who are appearing.

We do appreciate the opportunity to share with you our concern.

Mr. DANIELSON. Thank you very much. I am terribly sorry that we have these time constraints.

[The full statement follows:]

STATEMENT OF JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, ON THE PUBLIC DISCLOSURE OF LOBBYING ACT OF 1979

I am James E. Wood, Jr., Executive Director of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These groups have a current membership of over 27 million.

Through a concerted witness in public affairs, the Baptist Joint Committee seeks to give corporate and visible expression to the voluntariness of religious faith, the free exercise of religion, the interdependence of religious liberty with all human rights, and the relevance of Christian concerns to the life of the nation. Because of the congregational autonomy of individual Baptist churches, we do not purport to speak for all Baptists.

However, the Baptist Joint Committee consistently has opposed any lobby registration act which does not exclude churches from coverage and the Southern Baptist Convention, the largest Protestant denomination in the country, at its June 14, 1978 meeting overwhelmingly expressed "alarm over the potential threat to religious freedom inherent in proposed lobbying legislation calling for tighter governmental control over churches and not-for-profit groups . . . and [urged the Baptist Joint Committee on Public Affairs] to continue its steadfast opposition to such legislation." Other Baptist denominations hold similar positions. I am confident that this testimony reflects the opinion of the vast majority of Baptists throughout the United States.

The Federal Regulation of Lobbying Act of 1946, 2 U.S.C. §§ 261-270, the various lobby registration bills considered by the 95th Congress, as well as H.R. 81 and similar pending bills appear to rest on three basic premises: (1) the attempts by individuals or groups to influence the direction which legislation takes are inimical

to the democratic legislative process, (2) lobbying is not a right protected by the freedom of speech or the right to petition clauses of the First Amendment, and (3) the religion clauses of the First Amendment do not further mandate that lobbying by religious organizations be excluded from coverage by any legislation affecting lobbying activities.

These premises are invalid. We categorically reject them and agree with Mr. Justice Jackson in his dissent in *United States* v. *Harriss*, 347 U.S. 612 (1954) at 635, that the First Amendment "confers a large immunity upon activities of persons, organizations, groups and classes to obtain what they think is due them from government. Of course, their conflicting claims and propaganda are confusing, annoying and at times, no doubt, deceiving and corrupting. But we may not forget that our constitutional system is to allow the greatest freedom of access to Congress, so that people may press for their selfish interests, with Congress acting as arbiter of their demands and conflicts." We maintain that it is not the advocacy of ideas but the extension of personal favors and personal funds by special interests which threaten the democratic processes.

At a time when Congress has come under criticism for being aloof from and unresponsive to the general public, it would seem especially appropriate that Congress would seek to expand the access of the general public to it rather than chill the desire to communicate or make the procedure for communicating prohibitively expensive and/or administratively burdensome. The lobby groups which would be most chilled or muted by pending lobby disclosure bills are the public interest lobbies. Special interests have the determination, manpower, and funds to continue their activities. Also, tax laws which allow the write-off of lobby costs as ordinary and necessary business expenses lessen the possibility that special interest lobbies will be chilled or muted in their communications with Congress. Regardless, we contend that neither public interest lobbying nor special interest lobbying is inherently evil and should be equally permitted and encouraged.

FREEDOM OF SPEECH AND THE RIGHT TO PETITION GOVERNMENT

The rights of freedom of speech and petition of government as well as the other fundamental rights of freedom of religion and freedom of the press are protected from most congressional intrusions by the First Amendment. Under the Fourteenth Amendment the same protections circumscribe state action. These fundamental rights may be limited by Congress or the states only if there is a compelling governmental interest which must be served and if the proposed limitation is the least restrictive possible to serve that interest. As Mr. Chief Justice Hughes said, "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg* v. *People of State of California*, 283 U.S. 359 (1931) at 369.

Lobbying involves both speech and petition and is, thereby, an activity protected by the First Amendment. Every person or group engaged in trying to influence legislation is exercising a right under this Amendment. *See Liberty Lobby, Inc.* v. *Pearson*, 390 F.2d 489 (D.C. Cir. 1968), *Palmigiano* v. *Travisono*, 317 F.Supp. 776 (D.R.I. 1970). Similarly, the lobbyist's freedom to openly and appropriately communicate with government about legislation is clearly assured. *Fritz* v. *Gordon*, 517 P.2d 911 (1974). The United States Supreme Court narrowly construed the Federal Regulation of Lobbying Act of 1946 in the case of *United States* v. *Harriss*, *supra*, and in a 5–3 decision affirmed the constitutionality of the Act as it applied to persons who solicit, collect, or receive money to attempt to influence legislation. The Court, in discussing pressures on Congress, stated that the evil which the Lobbying Act was designed to help prevent was that of having the voice of the people drowned out by the voice of special interest groups seeking favored treatment. Yet, H.R. 81 and similar bills apply to special and public interest voices alike. The latter would be the first to be drowned out. We suggest that if this is the result, freedom of speech and the right to petition will be infringed without the presence of a compelling state interest.

Thus, there are valid reasons for this Subcommittee to fail to report this bill to the full Committee on free speech and right to petition grounds. However, this is not the major thrust of our testimony. The major concern of the Baptist Joint Committee on Public Affairs with reference to H.R. 81 and similar bills is that they fail to exclude bona fide religious organizations from coverage.

FREEDOM OF RELIGION

The First Amendment puts religion and religious organization in a unique category. Religious organizations are entitled to freedom of speech and the right of

petition plus they are guaranteed that Congress may make no law respecting an establishment of religion or interfering with the free exercise thereof. "The Free Exercise Clause . . . withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority." *Abington School District* v. *Schempp,* 374 U.S. 203 (1963) at 222-223. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972) at 220.

What is the nexus between religious liberty and lobbying by religious organizations? The concept of religious liberty demands that churches, conventions and associations of churches, synagogues, temples, mosques, etc. (hereinafter referred to collectively as churches) must define for themselves the nature and scope of their religious mission. Concomitantly, religious liberty denies to the state the power or the authority to define for the churches the nature and scope of their religious mission. Many churches consider as an integral part of their religious mission the obligation to speak to government in an attempt to influence the development of public policy. Therefore, the state may not deny, limit, or chill that religious activity short of the demonstration of a compelling state interest. This has not been demonstrated and, we contend, cannot be demonstrated.

For Baptists and other similar religious organizations involvement of the church in public affairs is an inescapable responsibility of the church. The church is bound to attempt to influence the formation of public policy because such an involvement is integral to the mission and ministry of the church; it is essential to the faith and teachings of the church and its divine obligation to society. As such it is a constitutionally protected activity. It is, therefore, our contention that this legislation, insofar as it applies to churches, abridges "the free exercise of religion."

Further, H.R. 81 and similar bills, when they fail to exclude churches, run afoul of the three-pronged test which the Supreme Court has established for evaluating legislation which involves First Amendment religious rights. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, . . . ; finally, the statute must not foster 'an excessive government entanglement with religion.' " *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971) at 612-613.

H.R. 81 and similar bills surely have a secular legislative purpose. However, when they are applied to churches, they fail to pass constitutional muster. By imposing time-consuming and expensive record keeping and reporting on churches in carrying out their religious mission, the bills would inhibit that religious activity. Similarly, the profoundly chilling effect of fear that ignorance of requirements, faulty recording of details, and inadvertent misreporting of activities might possibly trigger civil or criminal sanctions would substantially inhibit religion.

H.R. 81 and similar bills would unconstitutionally mandate excessive entanglement of government with religion. The requirements of registration with and reporting to the Comptroller General establish an ongoing process. To argue that the requirements are *de minimis* misses the point. §§ 4, 5, and 6 plus the rulemaking powers assigned to the Comptroller General in § 7(a)(6) of H.R. 81 constitute entanglement *per se.*

CONCLUSIONS

We maintain that the role played by the churches in attempting to influence public policy is religious and, therefore, any attempt to limit or regulate that activity is, on its face, unconstitutional. Therefore, we urge that the lobbying activities of churches be excluded from coverage by H.R. 81.

This exclusion of churches can be accomplished by deleting § 2(1)(B) of H.R. 81, redesignating § 3(b) as § 3(b)(1), and adding a § 3(b)(2) which would read, "This Act shall not apply to those organizations which are excepted from filing informational returns under § 6033(a)(2) of the Internal Revenue Code of 1954, 26 U.S.C. 6033(a)(2)(A).

This wording would appear to satisfy the objections of the Baptist Joint Committee on Public Affairs to H.R. 81 except that our support of such wording should not be interpreted as an acceptance of the phrase "integrated auxiliaries" found in 26 U.S.C. 6033(a)(2)(A)(i).

We do not presume that this specific wording necessarily reflects the thinking of other denominational groups and their thoughts should be solicited by this Subcommittee. We appreciate being invited to state our own position.

Mr. DANIELSON. Dr. Corbett? Sir, I believe I have seen you around these places many times.

Dr. CORBETT. Yes. Thank you very much, Mr. Chairman.

I am Jack Corbett, representing the Board of Church and Society of our United Methodist Church, which has 10 million members.

I would like to say we are not terribly concerned about H.R. 81, which is a rather limited measure; but we are concerned about the possibility of that bill becoming something like H.R. 1979 once it reaches the floor, as others have said.

And so I have addressed my remarks to that piece of proposed legislation because this is what I fear we are truly faced with.

Mr. DANIELSON. Your concern is that something might happen to this bill?

Dr. CORBETT. Yes.

Mr. DANIELSON. Such as happened to another bill at another time?

Dr. CORBETT. It happened last year on the floor. And I sat there and watched it happen. And I was dismayed. And it was an overwhelming vote, as I recall.

Mr. DANIELSON. Proceed.

Dr. CORBETT. Now, I would like to say, we are an open church, the United Methodist Church, and we have a rule that says that anyone in our church that wants to know what we are doing on public policy questions is entitled to know about it.

We have to mail out to them everything that we are doing about it. And we do that.

We are not against openness: we sort of have our own little lobby disclosure bill going within the church.

But we think it's a different thing for the Government to require this information from us.

I would like to go along with what has been proposed by my brother and colleague, Dr. Jim Wood.

Mr. DANIELSON. Would you suspend for a moment?

Mr. Hatfield, I understand—I just don't know how we can conclude today. I understand you——

Mr. HATFIELD. Mr. Chairman, I am prepared to make a very brief statement—I really mean it; so I would be glad to wait.

Mr. DANIELSON. Sir, you are welcome to wait. I just thought you had an immediate problem.

Thank you. Go ahead, Doctor.

Dr. CORBETT. Along with the Baptist testimony, we would request that there be an exemption from this legislation for religious groups; and do this on the grounds of the basis of our general conference position, our national body's position, the tradition of our church and Supreme Court action.

Now, I have listed on page 2 what are general conference position is, and it says that we have the right basically to relate ethics to public policy questions. And anything that denies that right strikes at the core of religious liberty.

I think the court case which the Baptists also quote in their testimony of *Lemon* v. *Kurtzman* in 1971 is important, and that particularly the second item, the second criterion by which they judge constitutionality of a statute.

And if that statute, and if it's religion, then presumably it is considered unconstitutional.

Well, the way we define religion in part is relating our Christian ethic to public policy questions. That's part of our religion. And that's deemed religious for us.

So we feel that we would, our board, would be inhibited by this type of legislation. So that's why we're asking for exemption.

And I think the wording of the Baptist proposal was a pretty good one.

We also have a tradition in our church. We have a social principle statement that goes back to 1908. Our founder, John Wesley, was known as an evangelist back in the 1700's, but he was also known as the person who advocated public health, penal reform, abolition of slavery. So we are proud of that tradition.

This is probably the major characteristic of our United Methodist Church as it is distinguished from any other body. We do consider that we would be inhibited because of the—as has been stated before—the burdens and requirements of the legislation, and the records we would have to keep not only separated into direct and indirect lobbying; but on behalf of our affiliates.

Our affiliates are 73 annual conferences, one in Baltimore; Baltimore has a conference covering Maryland; there's a Virginia annual conference; and they are all around the country; and, presumably, I am assuming they probably wouldn't report for themselves.

And we would have to report for them under 1979. Now, I am concerned about the specific expense of recordkeeping and reporting required; because you are very familiar with the passage that says that we must report, you know, mailing, printing, and so forth and—or the like. And or the like, we feel can cover an awful lot of ground.

And I listed on page 3 of my testimony 22 items that I thought we might be required to report on. And one item alone, long-distance telephone calls, if we were making a series of long-distance calls, I guess every time we made a call we'd have to call the operator and ask for the cost of that call, what the charges were, maybe what the tax was, and then go on and do the same thing with the next one; or wait for the bill at the end of the month.

But if we did that, we might risk being too late to have that included in the reporting period. So I think we have some problems with it.

We are concerned about the public interest organizations, the effect upon them, the effect upon their grassroots activity, the preservation of their right to petition. And we also feel that large legislative offices could carry on, do their work, have no problems with this, because they could simply hire somebody to take care of the recordkeeping; whereas the small offices, public interest groups, and most religious groups, would have a terrible burden by keeping these records and making these reports.

Therefore there is a sort of uneven and discriminating burden placed on them.

I thought the idea of this legislation, originally—in fact, sometime last year, I supported it; because I didn't understand it. I thought it was, you know, being open, you know, the public's right to know and it all sounded so good.

And I even have a statement—I regret to say—which was quoted in our United Methodist Reporter, the national publication, saying that I thought it was a good idea.

But I have spent more time on it, and I've changed my mind about it; because I think that it was designed to find out whether the special interest groups were doing something that was improper or illegal or inappropriate in their pursuit of lobbying.

And I see in this legislation the nets having been cast much too broadly, and that in trying to catch the tuna, the dolphin have been ensnared in the net.

Now, one very important final, pretty much final, item: And that is the contributions, the contribution item of which Mr. Moorhead is very concerned—I am glad he is.

But the organizational contributions: we have 40,000 churches out there. And I checked with our office in Chicago, our Council on Finance Administration, to find out whether or not they could get the figures for our churches that contribute $20,000, and that contribute $3,000 or more to the World Service dollar of which our board receives a small amount, of which a small amount of that is used for lobbying.

But there is a connection. We are a connectional system. And so we think—they told us there would probably be 20,000 churches that give $3,000 or more; and they said, you couldn't get this information. We can't even get it through our computer, certainly you couldn't get it within a month of the end of the year.

So we are placed in a catch-22 situation where it would be required by the law, but we could not provide it. And we would knowingly then violate this provision, and be subject to 2 years in prison.

So it does have a chilling effect on me.

Mr. DANIELSON. Let me interrupt just briefly.

You would do it knowingly, of course, but it wouldn't be done willfully.

Dr. CORBETT. That's right.

Mr. DANIELSON. So, we pick nits up here, but some very important nits. [Laughter.]

That's why I like that "willful" requirement.

Dr. CORBETT. OK, all right.

Mr. DANIELSON. I thought you should know that.

Dr. CORBETT. All right.

I would like to conclude by, as I say at the bottom of page 5 and 6, I ask for—that religious groups be exempt from coverage on the basis that it would inhibit the free exercise of religion as we know it; and also that the potential burden of this possible legislation, H.R. 1979, be lifted from all public interest groups in such a way as not to restrict the right of petition.

And I make the suggestion that the threshold be raised, which we talked about, much higher than it is, that we eliminate the grassroots lobbying and contributions; that we allow estimates on the expense reporting; and that we restrict the sanctions to fines.

And I would like to say, in conclusion, I did read the testimony given by the Assistant Attorney General, and I thought it was very sensible. I can see why she was selected you know to be a circuit court of appeals judge—very sensible, and it seemed to me that

what she was saying is, that when it comes right down to it, all we really need to know is what the salaries are of these people who are working on lobbying, and also what are the issues, and who's working on them. Those are the two major issues, she said.

She did, I think include something on contributions, which I would not like to have included; but those were her two major points.

And that would not be burdensome, for the burdensome question is so very important to us. I just wanted to clarify that.

Mr. DANIELSON. I just wanted to clarify Dr. Wood's request that churches be deleted from the impact of the bill. You told us how——

Dr. WOOD. Yes, on constitutional grounds.

Mr. DANIELSON. Yes, you told us how; but that's your wish.

Dr. Corbett, you are a little bit different. You don't mind the bill provided that the threshold is high enough, and reporting requirements be restricted to where they do not become burdensome.

Dr. CORBETT. It is burdensome, but we think 1979 is—and therefore, if it comes out in any form, then we would like exemptions.

Mr. DANIELSON. And I think we all do.

Mr. Moorhead?

Mr. MOORHEAD. I am very concerned about the expenditures problem, because I believe it could have a chilling effect on many groups. I am very concerned when you have two sides to a major issue, that is of concern to all the people of our country, one side of which may have to report every lobbying dime they spend, and the other side may not have to report any.

Whether there is a financial profit involved or not, does not have anything to do with the fervor that may go beyond the presentation of one's case. Nor on the lobbying effort put in to achieve a certain result.

Yet, if we have one side reporting, and the other side not reporting, you get a distorted total picture being given to the American people, with regard to the effort that takes place in order to win Congress over to one position or the other.

I am very concerned about letting any group off simply because they are nonprofit. I think we still live under the same rules, and the rules should be such that we are not discouraging lobbying of any kind.

I wanted your comments on that.

Dr. CORBETT. I can understand that, Mr. Moorhead. I really think, though, there is a difference between a public interest group and a special interest group. I would hate to have to be the one to define it. But the NRA was mentioned by Mr. McClory, and they think they are operating in the public interest.

I know those people. I agree that is a fair assessment. And I also know that they receive large contributions from gun manufacturers. They are very closely tied to the people who have an interest, a special interest in proving——

Mr. DANIELSON. Every church group receives money from gun manufacturers. All members of society contribute to these organizations.

Dr. CORBETT. All I am saying is I think there is—I am not saying I am the one that can define it. I think there probably is a differ-

ence between a public interest group and a special interest group; and I said in my printed testimony, actually if we really wanted to get at something that was significant in this country, I think that if we would pass H.R. 1, public financing of congressional elections, we would be much better off, because I think that it is very possible that there are some Congressmen who are not millionaires.

Mr. DANIELSON. I didn't know that. [Laughter.]

Dr. CORBETT. And it is possible it is very easy to incur an obligation to a special interest group. That is natural, we may expect that to occur.

And I think if that were eliminated, that possibility were eliminated, then all public interest groups lobbying could go into a Congressperson's office, and they would all go on the same basis, on the basis of the power of persuasion and the strength of the constituency they represent.

And I think that is fair play.

Mr. MOORHEAD. Well, I am not going to get into a discussion of H.R. 1, but I want you to know H.R. 1 would allow more special interest contributions than I spent in my total campaign this year.

So it doesn't really do anything to solve that problem.

Mr. DANIELSON. The time of the gentleman has expired.

The gentleman from Kentucky, Mr. Mazzoli?

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

Gentlemen, it is a matter of record that I supported, very strongly, last year's bill, and will continue to support that version this year. So I respectfully must disagree with some of the problems.

I would like, Mr. Chairman, at this time to use my remaining time——

Mr. DANIELSON. If you think it very important.

Mr. MAZZOLI. I gather that your feelings indicate your concern about the bill, and I think that we cannot lose sight of the fact that this bill—a bill, rather—has passed the House and probably reflects the position of the Members of Congress.

But the 1954 Supreme Court decision in *United States* v. *Harriss* has, I think, important language which ought to be in the record. In *Harriss* the Court stated that in the present day—this was interpreting the 1946 act, not the new bill:

> Present day legislative perplexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures; otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment, or masquerading as the proponents of the public will.

Another paragraph in the same opinion reads,

> Toward that end, Congress has not sought to prohibit those pressures—

The pressures on them by the various groups—

> it has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or send funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act in maintaining the integrity of the basic governmental process.

Mr. Chairman, that is important language from the Supreme Court decision which ought to be in the record, because it generally reflects my position, and, I think, the position of many Members of the House.

Let me also read a little bit more from a letter sent to this committee, Chairman Danielson, on February 27, 1979, from the Honorable Elmer Staats, the head of the General Accounting Office, the Comptroller General of the United States.

On page 2 of the letter, quoting from General Staats,

The present lobbying law, The Federal Regulation of Lobbying Act, 2 U.S.C., section 261 et seq., is universally considered ineffective from the standpoint of the law itself, its administration, and its enforcement. The Department of Justice is responsible for enforcing this law, although the Clerk of the House and the Secretary of the Senate administer the law, these officials are self-acknowledged repositories of information they cannot verify. They have no right of access to records, they lack investigative and compliance authority. Unlike other disclosure statutes, the Federal Regulation of Lobbying Act provides no tool to assist the administrating official in the verification and compliance process. H.R. 81 proposes an enforcement scheme almost identical to that of the present law. The General Accounting Office concluded a review of the administration and enforcement of the present law in 1975, when we issued a report entitled "The Federal Regulation of Lobbying Act Difficulties in Enforcement and Administration." This report confirmed that near total ineffectiveness of the enforcement scheme described above and the crippling and debilitating effects of that scheme on the lobbying law's administration.

Mr. Chairman, Mr. Staats also says, on page 3:

The report shows, for example, that of the 1,920 lobbyists who filed in one 3-month period in 1974, over 60 percent—

This is under the 1946 Act—

Over 60 percent filed late and nearly 50 percent of the filings were defective on their face. The administrating officials had no authority to require correction of even the most minor of these inadequacies.

And my last statement, Mr. Chairman——

Mr. DANIELSON. They are already in the record.

Mr. MAZZOLI. I am going to read it in nevertheless, sir.

I would make one recognition of the fact that our good friend and colleague, the Honorable Don Edwards, from the State of California, who if he were here would share in welcoming Mr. Debbs in the room, wound up his very eloquent and very important statement to this committee on page 6, by saying, in reflecting his opposition to lobbying legislation, "Mr. Chairman, we must not repeat the enforcement in California experience" and so forth, and then he says these questions have to be answered: Are they—the lobbyists—wining and dining members of Congress? Do they curry favors through parties, hotel rooms, hunting lodges, or liquor? Just what groups are misbehaving? Is it the professional lobbyist? Are there proponents who see this legislation as a device to put people out of business?

Let me say that those questions in my humble judgment can only be answered: Who's wining and dining and offering hunting lodges—if there's a lobby law to enforce.

I yield back my time.

Mr. DANIELSON. Thank you very much, Mr. Mazzoli.

Mr. Kindness of Ohio?

Mr. KINDNESS. I have no statement to make at this time, Mr. Chairman.

Mr. DANIELSON. Thank you, sir. [Laughter.]

Mr. KINDNESS. Mr. Chairman, I take that back. I would suggest—Dr. Corbett, just as you reexamined last year's lobbying disclosure legislation, you might reexamine H.R. 1, the public financing of congressional campaigns.

You might find you might not be much for it, too, when you look into that.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

I am conscious of the time. And there are a number of points I would like to bring up, but I am just going to limit myself to one.

I want to compliment both of the statements, especially the attempt you have made to define your exemption. Often we have groups come before us and say, we want to be left out; but they elude the tough part, finding the way to be left out.

But is it not—I have great fears when politicians and legislators and people like that start defining church. And don't you, even with your definition, find it somewhat difficult for us to get into the business of defining the church, and therefore, who should be exempt?

Dr. WOOD. Well, that is an entirely different question I think from the one we are facing and certainly one with which the Internal Revenue Service is dealing.

The court also has had to deal with it, as you know, from time to time. As a matter of fact the very famous dictum of Supreme Court Justice Hughes again; he decried the attempt to define religion because it defies limit—to use his exact words. It is, of course, a real problem and a real issue.

But I do see that as a quite different problem.

Those 501(c)(3) groups which are and have a history of being recognized as churches or synagogues in the country, pleading for constitutionality in terms of the first amendment's application to religion.

Mr. HARRIS. Well, even with regard to IRS interpretation of what a 501(c)(3) group is, and what activities it covers, whatever, you have problems, do you not, with the Government? I mean, this is no——

Dr. WOOD. Well, of course we recognize the fact even through the 1934 legislation, and the 1969 legislation, as well, because of the language which was then used, the broadening of this to include churches and integrated auxiliaries—of course, you are well acquainted with that history, I am sure.

Mr. HARRIS. When you use the term "bona fide religious groups," as you have, by referring it back to another statute, it appears to give us some solid ground; but the interpretation of that statute becomes difficult with regard to what is "bona fide" and "religious" groups or "bona fide and religious group activities."

Dr. WOOD. I must suggest to you that whether or not one is dealing with bona fide religious groups or not, that in no way erodes the whole history of judicial interpretation about religion. The very fact that today a group is formed and individuals are claiming this group is a church or synagogue is of course a legitimate question to discuss in any kind of public policy issue.

That has never, of course, deterred the court from dealing substantively with the question of the establishment and free exercise

of religion. The vast majority, of course, when we use the word "bona fide," there is some recognition within the 501(c)(3) of their entity, of their presence, and of their history.

I think it is quite another question to raise this about definitional problems about churches and religion.

Mr. HARRIS. One of the big problems we had last year, I think this is very relevant to our hearings of last year, and the whole process we went through, is we got into areas of exemption.

As soon as we started talking about exemption—I know the chairman went through the same process mentally—religious group exemption, educational exemption, public official exemption, local government groups, charitable exemptions, and what have you—it was my conclusion if a law like this is bad enough to exempt something, then it is probably not good enough to put it on the books at all.

If the law can't be good enough so that everybody is treated with an equal hand, then maybe in fact we can't have this sunshine law with regard to lobbying. And this is the real challenge, may I suggest, that the committee has and Congress has, with regard to this law.

Mr. DANIELSON. Thank you, Mr. Harris. I do agree our exemption is just like a hole in the dike; it just gets bigger.

Thank you both.

Dr. WOOD. Mr. Chairman, may I just make this one very brief comment?

Mr. DANIELSON. Very well. We have 5 minutes.

Dr. WOOD. Earlier in the discussion I felt perhaps in your asking me a question about the burden or at least making the statement on the exception—60 percent of the testimony you have before you is not concerned with the exception for the churches.

It is concerned, with the serious questions we raised with respect to this proposed legislation.

But to pick up, Mr. Harris, yes; we raised the question with regard to the exclusion of religions based upon constitutional issues.

Mr. DANIELSON. Sir, thank you very much.

[The full statement follows:]

TESTIMONY of DR. J. ELLIOTT CORBETT REPRESENTING THE BOARD OF CHURCH AND SOCIETY UNITED METHODIST CHURCH

TESTIMONY

Mr. Chairman, I am Jack Corbett, Director of Church/Government Relations of the United Methodist Board of Church and Society and I am appreciative of the opportunity to testify before this important committee.

The Board of Church and Society is one of four national program boards of our church, which embraces about ten million members. It consists of about 85 persons from all walks of life who are democratically elected within our church structure coming from various regions of the country. The Board operates within the framework of policy mandates of our General Conference, which meets every four years and includes about 1,000 lay and clergy delegates democratically elected from all parts of the nation. The General Conference last met in Portland, Oregon in 1976. Only the General Conference speaks for the whole church.

I wish to address my remarks primarily to H.R. 1979 because we think that the likelihood is that H.R. 81, a limited measure, will in effect become H.R. 1979 when it reaches the House floor, which is what occurred through amendment last year.

I would like to say at the outset that the United Methodist Church is not opposed to openness. In fact, we have church legislation, enacted by our 1976 General Conference, which requires us to respond to any requests for information about

what we are doing on public policy questions. So, actually our church has its own lobby disclosure measure and our members have the right to know about whatever we are doing in the name of the church. But it is another matter for the government to insist that it must know everything about what a church is saying in its private communications with its own members.

I confess to some puzzlement over what the compelling interest on the part of the government is which requires additional lobby disclosure information. We are not receiving letters from our members urging our support for lobby disclosure and I have heard of no overwhelming number of communications requesting this legislation coming into the offices of Congress.

The only major group I am aware of which wants lobby disclosure legislation is Common Cause, which has a few hundred thousand members. There is no call for this legislation coming from our church people, which include about ten million members.

I

First, I would like to request that, if the legislation is enacted at all in any form—it should include a section exempting religious groups from coverage. I would like to make this request on the basis of our General Conference position, the tradition of our church, and Supreme Court action.

In an official policy statement in 1968 on "Church-Government Relations," our General Conference declared: "The attempt to influence the formation and execution of public policy at all levels of government is often the most effective means available to churches to keep before modern man the ideal of a society in which power and order are made to serve the ends of justice and freedom for all people."

The General Conference also declared: "We believe that churches have the right and the duty to speak and act corporately on those matters of public policy which involve basic moral or ethical issues and questions. *Any concept of church-government relations which denies churches this role in the body politic strikes at the very core of religious liberty.*" (emphasis ours).

The major distinguishing characteristic of our United Methodist Church historically has been our emphasis on social concerns. The Social Principles statement of our church in its antecedents dates back to 1908 at which time, among other things, our church took a stand in favor of the right to collective bargaining. Our founder, John Wesley, was well known in Eighteenth Century England, not only as an evangelist, but as an advocate of public education, health care, penal reform and the abolition of slavery.

In the 1971 Supreme Court case of *Lemon* v. *Kurtzman* (403 U.S. 602 at pp. 612, 613), the Court applied a tri-partite test to determine constitutionality of legislation on First Amendment grounds as it deals with religion. Its criteria were:

(1) the statute must have a secular purpose;

(2) its principle or primary effect must neither advance nor inhibit religion;

(3) the statute must not foster an excessive government entanglement with religion.

The last two criteria appear to me to adjudge H.R. 1979 as unconstitutional. For it seems to me that H.R. 1979 does inhibit our Board of Church and Society from carrying out our church's General Conference mandate to act on public policy matters which involve ethical issues. It also would keep us from remaining true to our United Methodist tradition to apply our Social Principles with effectiveness in society.

We feel that the burden of record-keeping and reporting required by H.R. 1979 is so great that it would inhibit use from carrying out what is part of the church's mission, namely impacting Christian ethics on public policy questions. For United Methodists, this is a normal part of what it means to be "religious." Any restriction by the government of this right would limit the free exercise of religion as we have traditionally understood and practiced it.

For these reasons, we believe that it is imperative that religious groups be exempted from the requirements of any lobby disclosure legislation that is seriously considered.

There is precedent for this. In the Tax Reform Act of 1976, when a bill was passed which permitted charitable organizations to engage in a prescribed amount of lobbying, religious organizations were specifically exempted. That could be done again here.

II

Why do we consider H.R. 1979 unduly burdensome? Because the requirements for record keeping are too broad. Expenditures are to be reported by organizations

covered by Section 3(a) and apparently are to be allocated between direct and indirect lobbying activities and are to cover affiliates which do not themselves report. The latter requirement would mean reporting every quarter not only for ourselves but for 73 United Methodist Annual Conferences around the United States.

Expenses are defined in general terms in Section 2(6)(A)(ii) on page 4 of H.R. 1979 as including "mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a) . . ." "Or the like" covers a lot of ground. If a reporting organization is to be specific, it would have to keep expense records on: salaries, postage, envelopes, stationery, enclosures, folders, pamphlets, telephone calls, stapling, collating, service charges, advertisements, posters, labels, paper clips, duplicating, xeroxing, printing, mimeographing, telegrams, mailgrams, and consultant fees.

Thus, I note that this legislation requires us to keep detailed records of expenditures on at least 22 items. This in our view, is extremely burdensome. And when we look at one item—telephone calls—we see how burdensome this can be. If one is making a series of long-distance phone calls, must one call the operator after each call and ascertain the cost and record it? What about the tax? Or should one wait until the monthly bill comes and risk the possibility of being late in making a quarterly report?

In my judgment, this would keep us from doing our work—in other words, it would keep us from exercising freedom of religion as we define it. But I am also disturbed by what it would do to other public interest organizations. The "right to petition" would be terribly hampered because ordinarily concerned individuals out around the country depend upon public interest organizations to inform them about what is happening in Washington. If such groups are sidetracked from doing their respective jobs, the "right to petition" in this country may be utterly decimated. Grass roots involvement in the political process will decline.

Large legislative offices, such as General Motors and Exxon, will not be prevented from lobbying as per usual. They will simply hire someone full time for about $12,000 and ask that person to keep the records and make the reports. But most of the religious and other public interest legislative offices are small offices and consist of a director and a secretary and possibly a program person. For them to take the time out of their overloaded schedules and underfinanced operations to keep these records would severely handicap them in their work performance, placing an uneven and discriminating burden upon them.

As a result, a law which is designed to scrutinize and perhaps limit activities of large and powerful special interest groups could very well allow these groups to flourish unabated while public interest groups shrivel or die.

I thought the original idea of the legislation was to find out if special interest groups were doing something improper, illegal or utterly inappropriate in the pursuit of lobbying. Yet this broadly constructed legislation gathers up the innocent in its tentacles as well as exposing those who may be functioning improperly. The nets have been cast for the tuna and the dolphins have been ensnared in the mesh.

III

There is another provision in H.R. 1979 which greatly concerns me. This provision, if taken literally, would put us in jail. I refer to Section 6(b)(9)(c) which calls for organizational contributions of $3,000 annually to be reported if they go to the reporting organization and some of this is used for lobbying. Since the United Methodist Church operates as a connectional system, this section could apply to us. We have about 40,000 United Methodist Churches of which about 20,000 give $3,000 or more to what is called World Service (including the missions, educational and service agencies of the church). Our Board receives 3.6 percent of that World Service dollar. A modest portion of these receipts are used for lobbying.

The catch-22 situation is that it would be impossible for us to secure accurate reports from 20,000 churches within thirty days after the close of the last quarter of the year. Therefore, we would automatically and "knowingly" be omitting material facts "required to be disclosed" and thus be subject to criminal penalties up to two years in prison. Needless to say, this has a substantial chilling effect. Any attempt on the part of the government to secure or subpoena such information would probably involve "excessive government entanglement with religion." We are aware that the sanctions already exist in the U.S. Criminal Code under Section 1001 of Title 18 (18 U.S.C. 1001) against falsifying or omitting a material fact in a government report. With the millions of reports that are filed with the government annually, I doubt if this is being enforced. In any case, I believe criminal penalties are an unnecessary inclusion in this measure.

IV

Lobby disclosure legislation has already passed in New York and California and some other states. My contacts in Albany and in Sacramento inform me that there is little call being made for the voluminous information being piled up in warehouses as a result of the enactment of similar legislation in California and New York state. So why add to an accumulation of apparently useless information? The most persuasive example of its usefulness which Common Cause used is that it was nice to know in California how much the tobacco industry was spending in its campaign to defeat the proposed ban on smoking in public places listed on that state's referendum ballot. However, I wonder whether it would not have been possible to obtain the same kind of information through the efforts of a zealous investigative reporter in a much shorter time than the months it will take for these reports to be made, organized by the Comptroller General, and then made available to the public.

Common Cause did a good job last year in pointing out that on the Hospital Costs Bill the medical and hospital lobby used its leverage well in defeating that measure through the obligation incurred from political contributions. But this information was already available through the Federal Elections Commission without enactment of H.R. 1979. I believe that undue influence on legislation could be better curbed by passage of H.R. 1, the Public Financing of Congressional Elections bill than by passage of 100 bills like H.R. 1979. For without the entree given them by campaign contributions, special interest lobbyist would have no more influence upon legislators than the force of persuasion and constituent concern, which is what religious and public interest groups have now.

V

Therefore, Mr. Chairman, and members of the Committee, on behalf of the Board of Church and Society of the United Methodist Church, I respectfully request:

(1) that religious groups be exempt from coverage in lobby disclosure legislation on the basis of inhibiting the free exercise of religion.

(2) that the burden of H.R. 1979 be lifted from all public interest groups in such a way as to not restrict the "right to petition."

The latter could be accomplished in several ways: making the coverage threshold much higher than it is now; eliminating from any lobby disclosure bill those requirements for reporting of grass roots lobbying and contributions; permitting estimates for expense reporting; restricting sanctions to fines.

I appreciate the opportunity of presenting this testimony before this distinguished Committee.

Mr. DANIELSON. Our last witness whom we will be able to call this morning—I state that for the benefit of others who are waiting—will be Mr. Robert Hatfield, chief executive officer of the Continental Group, and representing today, the Business Roundtable.

TESTIMONY OF ROBERT S. HATFIELD, CHAIRMAN, THE CONTINENTAL GROUP, INC., ON BEHALF OF THE BUSINESS ROUNDTABLE

Mr. HATFIELD. Thank you very much, Mr. Chairman. It's good to see you again.

Mr. DANIELSON. Your formal statement will be received in the record if there are no objections. I hear none.

Mr. HATFIELD. All right, fine, sir.

With your permission, now, what I shall try to do is simply state our general position with respect to lobbying legislation; and then cover a couple of points on H.R. 81.

Mr. DANIELSON. Thank you. Proceed as you wish.

Mr. HATFIELD. Thank you, sir.

First of all, let me make it clear that we recognize the need for effective disclosure of substantial and significant efforts to influence issues before the Congress.

And we support legislation to make appropriate changes in the current lobbying law.

We think that such legislation should reflect the following principles:

First of all, our governmental system is based on the constitutional right of the people to freely petition their government.

Second, a lobbying law should not impose undue burdens of recordkeeping and reporting that could impair or inhibit the exercise of this right.

And all requirements and restrictions should apply equally to all individuals and groups who seek to influence issues before the Congress.

The most important objective is full disclosure of who is communicating with the Congress on legislative issues, and what they are saying. Extensive recordkeeping and reporting of time and costs is relatively meaningless, and runs counter to the current efforts to eliminate the cost of unnecessary government regulation and paperwork.

Even if such detailed reports were prepared, what purpose would they serve, and who would read them?

I strongly believe that practical, realistic legislation can be drafted that would disclose to the American people the influences on Congress and do so without unnecessary cost.

We, in general, sir, support H.R. 81. We do believe that and agree with those who have already taken the position, that grassroots solicitation should not be included in the bill; and we think it would undermine the chances of passing it.

We do think that there are some further changes that need to be made.

We think that the requirement that retained lobbyists report time spent in preparing and drafting lobbying communications is terrifically burdensome and that in essence the day's test that you folks very wisely put into the bill, we think should adequately cover it and if anything overstate the time, so that it would not have the fault of understating it.

We think there is some vagueness of definition of lobbying communication, that that is a problem which I outlined in my testimony, which is on file, Mr. Chairman. If you want me to go into it, I should be happy to.

We think there is another problem that remains: We applaud the committee for eliminating the criminal provisions of the bill, but we should like to point this out to you, that the bill needs to be added to, to call the civil remedies exclusive.

And the reason is that the criminal penalties of 18 U.S.C. 1001 may apply to the failure to include certain information in the reports and forms to the Comptroller General.

For example, communications made to a person not known to be within the definition of a Federal officer or employee; because of the threatening effect of the application of criminal penalties, this could magnify the paperwork burdens beyond any conceivable public benefit in its communications with Congress and Federal officials.

Now, I shall close with one statement that concludes my testimony:

I want to emphasize how easy it can be to make this law into yet another burdensome regulatory scheme; and how important it is to avoid such a result.

The paperwork burdens must be kept to the absolute minimum necessary. Every unnecessary requirement and every loosely drafted provision will multiply the number of rules and regulations required to implement the legislation.

The ingenuity of the regulatory writer to pile complexity on top of complexity should not be underestimated. At some point the power to issue reporting rules and regulations could quietly become the equivalent of the power to regulate lobbying communications themselves; because it would lead to an increase in cost and a decrease in exchange of important information.

We trust you and your subcommittee will devote yourselves to avoiding such a development.

On our behalf, let me say that we cordially support your efforts to come up with sound lobbying legislation. If you feel that we can make a contribution to your efforts by helping you with the drafting of some provisions or by explaining further the impact on the business community, we should be happy to make ourselves available, sir.

Mr. DANIELSON. Thank you, Mr. Hatfield.

Mr. Mazzoli?

Mr. MAZZOLI. Thank you, Mr. Chairman.

It is a pleasure to welcome Mr. Hatfield. He has been very helpful to this committee in times past, and the staff.

I have no specific question to ask. I want to congratulate you on a good statement; also the fact that you sense a need for some kind of a bill. It is not a negative stance you have taken, but I think a positive stance.

I think it will help us to draft the kind of bill which I fully agree, should not be overly burdensome as a source of paperwork; because that can be really sort of an inflationary tactic rather than an antiinflationary tact.

Further, it would tend to, if there were an unnecessary amount of paperwork, just in a backhanded way, influence the kind of lobbying and the extent to which——

Mr. HATFIELD. Let me expand on that, if I may, sir?

If the provisions of reporting expenses by individual members of a company, wherever they may be located—and in our company we have some 45,000 employees spread around the country—we would have to in effect tell them not to do any lobbying whatsoever on behalf of the company, even if they believed it themselves; because we would not want that question to be there.

Because otherwise we would have a detailed expenditure report procedure that would be so burdensome and so difficult for us to be sure that we were in compliance, that we would frankly be afraid to let it run a free course.

Mr. MAZZOLI. You and I obviously do not share the same view on a lot of these pieces of legislation and a lot of the details of the bill before us. However, I think we do share a feeling that there needs to be some kind of legislation, and the effort is to define which.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. Mr. Moorhead.

Mr. MOORHEAD. I wish to thank you for your statement. I do agree with most of the things you have commented upon this morning.

But one thing I wanted to ask you about: We have left the criminal penalties out of the bill this year. The Attorney General has suggested that we superimpose a civil investigative demand, CID, as an aid to enforcement, which would have subpena powers and so forth.

Do you support that kind of approach?

Mr. HATFIELD. No, sir, I do not.

I believe that civil penalties in legislation of this kind are perfectly adequate to be what you might call restraining on the citizenry of the United States of America. And I happen to believe that one of the most precious things we have in this country is our individual freedom. And I happen to believe that the government involvement in our daily lives is reaching enormous proportions.

And so any move that would give that authority to government officials to issue more subpena powers in addition to those already on the books, unless there were a clear and present danger to our Nation, I would oppose.

Mr. MOORHEAD. I guess you commented on the fact that while we may leave criminal penalties out this time, that there are still criminal penalties already in the law for filing false reports or making false statements. So, those penalties will remain in the law whether we add them to this bill or not.

Mr. HATFIELD. As a matter of fact, Representative Moorhead, if the drafters of the bill do provide in the bill that civil penalties are exclusively permissible under the bill, then it does come out from under that other legislation which is 1001, I think.

Mr. MOORHEAD. Title 18, section 1001.

Mr. HATFIELD. Thank you, sir.

So I think if you folks decided that if you wanted to put that provision in and make it exclusively civil remedies, that you could cure that defect.

Mr. MOORHEAD. Thank you very much.

Mr. HATFIELD. Yes, sir.

Mr. DANIELSON. Mr. Kindness of Ohio?

Mr. KINDNESS. I have no questions, Mr. Chairman. Thank you very much.

Mr. DANIELSON. I have none. We have gone over this for the record, personally; you have talked with me, I have talked with you; your statement covers the whole gamut of the subject very well. I know you will at least be monitoring our markup sessions. You certainly are welcome to make any suggestions or contributions you wish, as I am sure other persons will.

Mr. HATFIELD. Mr. Chairman, again I thank you very much for the opportunity to testify.

Mr. DANIELSON. Thank you very much.

[The full statement follows:]

STATEMENT OF ROBERT S. HATFIELD, CHAIRMAN, THE CONTINENTAL GROUP, INC.

Mr. Chairman, members of the subcommittee, my name is Robert S. Hatfield. I am Chairman and Chief Executive Officer of the Continental Group, a leading packaging, insurance and natural resources company. I am today representing both

my company and The Business Roundtable, an association through which the chief executive officers of some 190 U.S. companies focus and act on public issues.

I thank you for this opportunity to testify again on the efforts of your subcommittee to develop a more effective lobbying disclosure law. Hopefully, you will find constructive suggestions in my remarks. I shall try to answer any questions you may have.

My testimony will be brief. Let me say at the outset that we share the general concern that the current lobby disclosure law is ineffective.

Because of its vagueness and ambiguities. It should be improved. Lobbying activities should not be secretive. As I observed before this subcommittee in 1977, "as a businessman, I have nothing to hide. I strongly support full disclosure of what the Continental Group says and does in communicating with the Congress. I believe this should be the case for all who lobby".

New legislation is needed to improve public confidence in the relationship between Congress and private institutions. Such legislation should not, however, inhibit the right of these institutions to express their views because of unreasonable paperwork or disclosure burdens. Legislation should be as clear and as simple as possible. The more complicated, detailed and ambiguous are the record-keeping and reporting requirements, the less effective and greater the opportunity for error and inadvertent noncompliance.

As I previously testified, "our American system of government cannot function properly without the free and unfettered flow of information between the people and the Congress. Unsound legislation would unduly restrict this flow and decrease your ability to communicate with your constituents and to make well informed decisions."

Of the bills before the Subcommittee, H.R. 81 comes the closest to meeting the basic criteria of protection of free speech, reasonable recordkeeping and reporting requirements and equal treatment for all. There are however, a number of other bills before the Subcommittee which do not meet these criteria. Some of these include provisions raising serious constitutional issues and are politically controversial. I am, of course, referring to the so-called "grass roots" solicitation reporting requirement and proposed disclosure requirements with respect to the membership and finances of lobbying organizations.

The Business Roundtable now believes that neither of these provisions should be included in the legislation. Neither provision would add enough meaningful information to warrant the risks of abridgment of First Amendment protections. Most importantly, I am now personally convinced that inclusion of such provisions would undermine the efforts of your Subcommittee to pass a bill and would lead to endless challenge in the courts.

We think H.R. 81 in general represents a responsible effort to provide reasonable and effective legislation and we commend your committee for improvements made in the bill.

I hasten to add, however, that the bill would benefit from changes in two basic areas. I shall briefly discuss them without going into too much detail. We would be happy to provide specific language if you wish.

The first area that needs improvement is in connection with the reporting burdens. H.R. 81 still requires too much paperwork which will inhibit important communication without providing any corresponding disclosure benefits. A prime example is Section 3(a)(1)—which requires that retained lobbyists report to lobbying organizations such as ourselves on the time spent in preparing and drafting lobbying communications. This is an exceedingly burdensome requirement, and perhaps impossible to comply with as a practical matter.

It is, in many cases, difficult to know when and if background research or analysis will ultimately be used in some lobbying communication. For example, we often ask a consultant, economist or lawyer for a memorandum analyzing the impact of proposed legislation to aid us in the formulation of our own positions on various issues. In some instances, we may later use the memorandum with perhaps a few changes in connection with our lobbying efforts. At this later stage to reconstruct how much that memorandum actually cost and what portion of it represents a lobbying expense would be extremely difficult. This difficulty is compounded when such lobbying communications contain inputs from several sources.

Compliance with this cost allocation requirement is possible of course. A special lawyer, accountant or "timekeeper" could keep account of each lobbyist in everything he does and be ready to add or subtract hours depending on what transpires over the course of every day. But this would make a mockery of the legislative process. There seems little justification for burdening the process and the cost of compliance in this manner. I am told that there are even proposals to broaden this

preparation and drafting requirement to cover employees of the lobbying organization as well. This is simply not realistic, and would make a shambles of compliance.

There may be a fear that elimination of preparation and drafting might understate the level of lobbying activity. But H.R. 81 already contains a simple and effective solution to this fear. The bill embodies the so-called "days test" for determining when an organization has to register, and what it must report. The bill thus requires an organization to report a five-minute telephone conversation as a full day of lobbying, even if it is the only communication made that day. I cannot imagine any lobbyist who spends every minute of an eight-hour day engaged in lobbying communications even when he spends the entire day on the Hill. This measurement-by-day or "days test" provision will thus dramatically overstate the time actually spent and more than make up for any understatement resulting from elimination of the preparation and drafting coverage. But the purpose will be served.

I have, perhaps, dwelt too long on this one example of reporting and recordkeeping burdens. There are other problems, such as the vagueness of the definition of lobbying communication itself. When, for example, does a conversation with a Member or his staff about a constituent matter or an executive branch regulatory problem—neither of which would be covered by the bill—turn into a discussion about possible legislative solutions—which would be covered. It would be incredibly burdensome to require us to monitor every single minute of every single conversation.

The bill provides a possible solution in Section 2(9) which requires reporting of executive branch lobbying only with respect to legislation which has actually been transmitted to or introduced in Congress. We would prefer that this seemingly clear, if somewhat arbitrary standard, be applied to Congressional contacts as well. But it may, in fact, be almost as difficult to comply with. It would require day-by-day monitoring of *all* the thousands and thousands of bills introduced each year no matter how unlikely they are ever to be the subject even of hearings; and it would require daily monitoring at the White House to determine when proposed bills are "transmitted".

What I am saying, Mr. Chairman, is that there are practical problems and issues still remaining in the bill. We are eager to cooperate with you in seeking workable solutions.

The second major area that requires improvement is in connection with the enforcement procedures. I understand that the Department of Justice has been working with the Subcommittee to refine the enforcement provisions. We applaud the decision of the Department to seek elimination of the criminal penalties in H.R. 81 itself. However, before it can be truly said that civil penalties are the only applicable sanctions, one further change is necessary. The legislation should specify that the sanctions in H.R. 81 are exclusive.

Otherwise, the criminal penalties of 18 U.S.C. 1001 may apply to the failure to include certain information in reports and forms to the Comptroller General; for example, communications made to a person not known to be within the definition of a federal officer or employee. Because of their in terrorum effect, the application of criminal penalties could magnify the paperwork burdens beyond any conceivable public benefit and inhibit communications with Congress and federal officials.

I want to emphasize in closing how easy it can be to make this law into yet another burdensome regulatory scheme and how important it is to avoid such a result. The paperwork burdens must be kept to the absolute minimum necessary. Every unnecessary requirement and every loosely-drafted provision will multiply the number of rules and regulations required to implement the legislation. No one should ever underestimate the ingenuity of the regulation writer to pile complexity on top of complexity. At some point, the power to issue reporting rules and regulations will quietly become the equivalent of the power to regulate lobbying communications themselves. Because it would lead to an increase in costs and a decrease in exchange of important information, we trust you and your subcommittee will do everything you can to avoid such a development.

Thank you very much. I will be happy to answer any questions, and my assistants in this matter will be happy to work with your staff on any detailed questions that may arise.

Mr. DANIELSON. I have to regretfully state to the interest groups panel that it is not possible to stay in session any longer today. I am embarrassed to have to send you away without having testified, but I do not have any choice.

We will reschedule, hopefully, at your convenience. That's all I can say.

I thank you very much for coming, and I am speaking to Ms. Rhea Cohen and her group.

And we will schedule you as soon as possible and as quickly as possible. Thank you all very much.

The next meeting of the committee is subject to the call of the Chair. The committee is adjourned.

[Whereupon, at 12:12 p.m., the hearing was adjourned to meet at the call of the Chair.]

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

WEDNESDAY, MARCH 21, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 9:45 a.m., in room 2226 of the Rayburn House Office Building, Hon. George Danielson presiding.

Present: Representatives Hughes, Harris, Moorhead, McClory, and Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., assistant counsel; and Alan F. Coffey, Jr., associate counsel.

Mr. DANIELSON. The hour of 9:45 having gone by, we will begin.

We are honored today to have with us a former Member of the House, the Honorable James G. O'Hara of Michigan, who is presently a practicing lawyer in Washington.

Jim, you have a statement that you would like to file with us?

TESTIMONY OF JAMES G. O'HARA, ATTORNEY, PATTON, BOGGS & BLOW, WASHINGTON, D.C.

Mr. O'HARA. Yes; I do, Mr. Chairman. I would like, with the chairman's permission, to simply file the statement for the record, and to summarize my comments.

Mr. DANIELSON. Thank you. Without objection, your statement will be received in the record and I commend you on summarizing. It's always, as far as I'm concerned, far more effective if you summarize rather than read those statement. You may proceed.

[The complete statement follows:]

STATEMENT OF JAMES G. O'HARA

Mr. Chairman and Members of the Subcommittee, my name is James G. O'Hara. I am a partner of, and in this proceeding, a spokesman for the Washington law firm of Patton, Boggs and Blow. As long-time registrants under the Federal Regulation of Lobbying Act of 1946, we welcome needed changes in that antique law and appreciate this opportunity to discuss the proposed reform measures.

First, let me begin by applauding the Members and staff of the Administrative Law Subcommittee on their painstaking and thoughtful work on lobbying reform legislation. That work was in full tilt even when I was a Member of Congress. I have always believed that the public is best served by reasonable disclosure of the functionings of government. The public has a right to know how the legislative process works, how it is affected, and who participates in the decision making. This Subcommittee has made a major contribution in drafting H.R. 8494 and its successor, H.R. 81, to improve the lobbying disclosure law.

It may come as some surprise that an organization subject to the old lobbyist registration law would argue for its revision. As you are well aware, however, the 1946 Act defies interpretation, making compliance exceedingly difficult. The "principal purpose" test erected by the Supreme Court in *United States* v. *Harriss*, 347 U.S. 612 (1954), only complicated determination of when to register what communica-

tions by whom. Thus, not only has the old law failed to promote full, or even any, disclosure of a significant number of lobbying efforts, but it has often stymied those who have made a good faith effort to report their lobbying activities. The pending reform legislation offers major improvements over the 1946 Act, particularly in its clarity of definition. With some few but important modifications, H.R. 81 is a bill we can support.

COVERAGE

The most significant change in the reform proposal is that "organizations", not individuals, would be required to register and report. With the exception of an agent of a foreign principal who lobbies, an individual would not need to register whether retained as a lobbyist by an organization or regularly employed by an organization as a lobbyist. Thus, not only large corporations but also small organizations, local service groups, charities, churches, and trade associations would have to report their lobbying activities. A law firm or consulting firm retained by an organization and lobbying solely on behalf of its client would not itself be subject to the reporting requirements. Moreover, the lobbying organization would not have to register and report its activities unless it crossed either of two "thresholds":

(1) by retaining another organization (such as a law firm or consulting firm), or an individual (such as an independent contractor), and paying that "retainee" over $2,500 in a quarterly filing period to make lobbying communications, or to prepare or draft such communications; or

(2) by employing at least one individual who makes one or more direct lobbying communications on all or part of 13 or more separate days—or two individuals each of whom makes one or more direct lobbying communications on 7 days—in a quarterly period, and spends over $2,500 in that period.

Other significant changes are the expanded definitions of "lobbying communications" and "federal officers" to whom communications made would be covered under the bill as lobbying activities. First, the reform proposals would bring oral as well as written communications under federal regulations. While my law firm, Patton, Boggs and Blow, has always considered oral communications as lobbying contacts and reported them as such, I understand that not all lobbyists have done so. Second, the definition of "federal officer or employee" includes Members of the House of Representatives and Senate and their staff. It may also cover officers and employees of the executive branch if a lobbying communication is made to such officer to influence the content or disposition of legislation, nomination, or hearings. These two definitions alone greatly expand the scope of lobbying registration requirements.

While the new threshold concept and the broadened definitions in H.R. 81 may be more precise than the old Act's vague "principal purpose" and "direct communications" tests, the reform proposal errs on the side of overbreadth. The proposal would compel all employees and all retained persons to keep detailed records of all their oral and written communications with Members of Congress, congressional staff members, and officials and employees of the executive branch. The employing or retaining organization would then have to decide whether the nature and cost of these communications qualified them as lobbying communications for purposes of the reporting threshold. An organization might also have to catalog all letters, reports, studies and other materials that might one day become lobby communications just to be able to prove that it did not cross the threshold.

I understand that the Subcommittee has given consideration to the First Amendment problems that arise with such pervasive regulation of free speech. It is not my intention to dwell on this philosophical issue, although it gives me deep concern as a lawyer and former Member who always benefitted from free communications and debate on legislative matters. Today, however, I want to focus on some of the more practical problems which the proposed disclosure requirements could pose for lobbying organizations and the individuals they retain or employ to lobby.

My primary concern with both H.R. 81 and H.R. 1979 is their overly burdensome reporting requirements and their unnecessary distinctions between retained and "in house" lobbyists. The first problems arise with the proposals' new threshold tests for coverage.

To determine whether or not it has crossed a threshold, an organization would have to total all its lobbying expenses to see if they exceeded $2,500. On the surface, the calculation would seem to pose no problem. In fact, the proposals generously allow the organization the option to total all its expenses or to allocate their lobbying and nonlobbying expenditures for the purposes of the threshold test.

The calculation is much more complicated, however, since expenditures covered under H.R. 81 include costs for mailing, printing, advertising, telephones, consulting fees and other costs attributable to lobbying activities. There's the rub. "Attributa-

ble partly" to lobbying can also be costs for office equipment, basic utilities, and monthly rental and mortgage payments. According to recent testimony by the General Accounting Office, additional allocable expenditures could include costs for research, drafting, support staff salaries and fees of employees and retainees who do not lobby exclusively, as well as overhead costs. Dissecting costs of lobbying activities and communications could also require calculation of costs for typing, xeroxing, collating, stapling, packaging, mailing and delivering. Furthermore, if an individual who lobbied for the organization received an amount in excess of the actual costs of transportation and the prescribed per diem allowance, the organization would have to keep tabs of that excess amount and add it to other non-exempt expenses.

I note from previous testimony on the lobbying reform legislation that I am not alone in opposing its onerous allocation and reporting requirements. The problem is magnified, however, when a retained lobbyist is involved. I respectfully remind the Subcommittee that in order for an organization to calculate its expenditures, it must ascertain all the retainee's expenditures as well. That means not one but two sets of records of all lobbying-related costs must be maintained. Thus, while a law firm or consulting firm no longer would have to register and report, it still would have to keep detailed expenditure records.

It must be remembered that in most cases, organizations required to register and report under the new scheme have never had to deal with lobbying disclosure requirements before. They will have to learn new regulations, establish new internal procedures, and closely monitor their employees and retainees. We all have come to expect that disclosure efforts will generate more paperwork and government red tape. Yet a reasonable middle ground on reportable lobbying expenditure must be found.

For example, the Department of Justice has a commendable approach for the $2,500 threshold calculation. Included would be only those expenditures for the retention and employment of persons who prepare, draft, make or assist in making lobbying communications, thereby excluding from the threshold determination overhead expenses such as telephones, advertising, mailing and rent. Common Cause endorsed the Department's proposal and GAO made a similar recommendation. The Justice Department further suggested that retention and employment expenses for any lobbying activities would be computed at the full daily rate for each day on which such activity occurred. I would modify the suggestion by applying the daily rate computation only to employees of lobbying organizations. I will explain my reason for this treatment of "in house" lobbyists in a moment.

The advantages to the Justice Department's approach are twofold. First, salary and retainer expenses are normal bookkeeping entries, readily understandable and ascertainable by an organization. Second, such expenses are easily verified, so that in the unfortunate circumstances that auditing is required, it can proceed expeditiously. The record keeping of the retained individual or organization will be far less burdensome, yet the significant expenditures will still be disclosed. This is particularly true when a retained lobbyist includes in the retainer or fee the costs for all lobbying expenses and communications.

The Justice Department and GAO have made similar recommendations for simplifying lobbyist reporting requirements. They suggested that cost allocations for the purpose of reporting total direct lobbying expenditures should be limited to salaries of retainees or employees for persons who prepare, draft, make or assist in making lobbying communications. Moreover, the Department proposed that expenditures for preparation, printing and distribution of lobbying communications be reported only to the extent that the costs exceed $5,000 in any quarter. Common Cause endorsed that concept as well, stating that calculation problems will be alleviated if organizations are allowed to make "good faith estimates" without attribution of costs which cannot be determined with "reasonable preciseness and ease."

Another major concern I have with the reform proposals is their distinction in threshold activation between persons retained and persons employed by organizations to lobby. The effect of the distinction is to discriminate against the retainee. An organization becomes a lobbyist merely by retaining a lawyer, consultant or public relations firm for a fee of over $2,500 a quarter. No contact with a federal officer is required to trigger coverage—only retention to make or prepare lobbying communications.

The two tier approach is not only difficult to understand, but it would also open a large loophole for lobbying organizations with big staffs. As Representative Herbert Harris warned during House floor consideration of past year's lobbying reform bill, an organization with many lobbyists could spend $100,000 on lobbying in a quarter without having to register. It would simply limit one employee to lobbying no more than twelve days, while fourteen other employees limited their lobbying to six days

in that quarter. The thirteen "free" days of lobbying communications subvert the entire lobbying disclosure effort. If an organization can employ ten people on its Washington staff to lobby six days each quarter, that organization's lobbying will go undisclosed even though it has influenced federal officers on every single working day of that quarter.

The "days" test also causes other complications. In counting days towards the "in house" threshold, would you count those days spend drafting and processing lobbying communications? For example, if a letter were dictated on day one, typed on day two, signed on day three, and mailed or delivered on day four, does that count as one lobbying communication or four?

As a possible solution to this dilemma, I suggest abolishing the retainee-employee distinction. Perhaps an amendment along the lines of the Justice Department's proposal for threshold determination should be adopted. For instance, an organization would be required to register and report only when it retained or employed persons to prepare, draft or make lobbying communications at an expense exceeding $2,500 per quarter. In the case of "in house" employees, the salaries of each could be computed at the full daily rate for each day on which lobbying communications were made.

The amendment would equalize treatment of retained and "in house" lobbyists. Expenditures for lobbying communications and related overhead costs would be included in charges or fees in the case of a retained lobbyist and in the daily rate of compensation in the case of an employee or executive who lobbies for the organization. The modification would also eliminate the complicated requirement that either one "in house" lobbying employee make one or more direct lobbying communications on all or part of thirteen or more separate days, or two "in house" lobbyists each make one or more such communications on seven days in a quarter.

There are, of course, many other thorny issues entwined in the lobbying reform proposals. For the sake of time, I have not addressed other provisions which concern me, such as reporting of an organization's major contributors, its "grassroots" lobbying activities, its position on issues and the methods by which it arrives at those positions. Before concluding my remarks, however, I would like to join with the Justice Department and the GAO in recommending that the criminal penalties be deleted from the lobbying reform legislation. Since the disclosure requirements practically guarantee inadvertent mistakes or omissions, notwithstanding good faith compliance efforts, civil sanctions are more than adequate to remedy violations. Criminal penalties are particularly inappropriate when First Amendment protected activities are involved.

Mr. Chairman, that concludes my formal remarks. Again, I thank you for the opportunity to testify and hope my suggestions on the threshold and reporting requirements will assist the Subcommittee in its future deliberations on lobbying disclosure legislation.

Mr. O'HARA. That's exactly why I'm doing it that way, because I sat where you sat and I discovered that it was much more effective when the witness simply spoke his own conviction and I wish to emphasize, Mr. Chairman, that in appearing before you today, I do appear on my own behalf and on behalf of my law firm and not on behalf of any particular client.

Our law firm, Patton, Boggs & Blow, does indeed do a very considerable amount of legislative work, and we represent a rather large number of clients with respect to legislative proceedings. So we have had considerable experience in dealing with current law and have to appreciate its total inadequacy to report the lobbying expenditures of organizations or our own activities.

I consider the present law to be worse than nothing in that it is more apt to mislead and misinform than it is to inform, and I certainly want to complement the committee and the chairman for their work in trying to enact a better statutory scheme than the one that we currently have.

As a matter of fact, we generally support the law. I have the same first amendment reservations that everybody does, but I think the law is an improvement over the old law and if we are

going to have one, certainly we ought to have something along these lines.

As a matter of fact, as an aside, maybe it doesn't go far enough. I sort of share the views of Herb Harris, that if we are to have a law, it ought to have some additional things in it that aren't in it to require, for instance, major contributors to committees and so forth, reporting of them, and to get more into the grassroots type of cloak.

The chairman knows that becomes the most effective and most pervasive type, but aside from that, I would like to address my comments really to two requirements that I feel the committee ought to attempt to correct.

First, I think there is a requirement for excessive recordkeeping. We represent a number of clients, Mr. Chairman, with respect to all of their dealings with the Federal Government. We may spend only a minor portion of the time that we devote on behalf of the client to any sort of legislative activity, and the major portion may be some other kind of activity, and we are perfectly content to report, if that's required and if we pass the threshold, but we have a problem with this business.

The way we bill our clients is based on the hours devoted to the client's business by the attorneys, the partners, and associates. We don't keep any separate records for the most part of the time that other staff in the law firm, the stenographers and Xerox operator and so forth and so on, devote and the telephone expense and what have you.

That overhead is sort of included in our hourly fees. So if I spend an hour and my hour is billed, that billing is set at a level that really sort of covers all the work done by others assisting me.

Mr. DANIELSON. May I interject?

I think I'm sure I follow you. You keep time records in the traditional law office style.

Mr. O'HARA. Exactly.

Mr. DANIELSON. The client is billed on the basis of the attorney's hours put into a given case.

Mr. O'HARA. Exactly.

Mr. DANIELSON. And the per-hour rate includes your share of the rent, the lights, the telephone, the library, the stenographers; anything else is just overhead and is lumped in and prorated for your hourly base. But the firm bills on the basis of, first of all, how many hours James O'Hara puts on this client; second, on this case, in case you have more than one matter pending with the same client.

Mr. O'HARA. That's exactly our system and we are very concerned that the bill as written would require us to start keeping separate track of our secretaries' time, the cost of all different kinds of things, the cost of our stationery, the cost of this, that, and the other, in order to determine, one, if we have gone past the threshold; and second, in order to determine, once we have gone past the threshold, what proportion of the bill to the client represents a billing for covered activities and what portion represents——

Mr. DANIELSON. Let me throw in a couple more questions.

I think we understand each other very well. You would not find it a burden, recordkeepingwise, to keep track of how much did your firm, or the individual attorneys within your firm for that matter, spend on the lobbying activity for the ABC company because you're going to be billing ABC company anyway and you do it on an hourly basis.

Mr. O'HARA. Exactly.

Mr. DANIELSON. So at the end of a month or any given period of time, your firm would not only have the time that James O'Hara put on that matter but they would have the time that Mr. Jones or Mr. Smith and Mr. Andrews also put into that matter so it would be a relatively simple matter. You are doing it anyway, except you have to make an additional computation.

Mr. O'HARA. Believe me, as those clients of ours who have been kind enough to pay their bills know, when we do work for a client we bill him. I don't think that we ought to be required to keep any other additional records of our secretaries' time or of our telephone expense or whatever, and try to attribute it——

Mr. DANIELSON. I follow you. You made your point very well. Did you have another?

Mr. O'HARA. Yes; I do.

I might just add as a final note on that, you do have in the legislation a provision that says that a reporting organization may not be required to adopt any new accounting methods for purposes of determining if it passes the threshold.

Mr. DANIELSON. No special ones.

Mr. O'HARA. But retainees are not given the benefit of that same exemption, nor does that exemption go to how you allocate once you have passed the threshold.

The second thing, Mr. Chairman, that I'd like to call to your special attention——

Mr. DANIELSON. I am glad you offered that. That's strictly an oversight in drafting. I'm sure that we intended that but obviously if we haven't put it in, we haven't put it in. Thank you.

Mr. O'HARA. Maybe my appearance here will do some good, Mr. Chairman.

Second, we believe that there is a rather unfair and invidious distinction between the threshold requirements for the organization that lobbies through its own use of its own employees on the one hand, and an organization that retains counsel or a consulting firm on the other hand.

Under the threshold requirements, in the case of an organization that retains a firm, if that firm receives more than $2,500 in any quarter for a lobbying type of activity, then the threshold test is met and all the reporting requirements come into play.

On the other hand, if you are doing it through your own employees, you must spend at least $2,500 in a quarter and it is possible, I think, for someone who wishes to avoid the reporting requirements to go ahead and so arrange their employees' time so they don't pass that second threshold.

The second aspect of what bothers me is that the large organization or the major corporation that has enough business in Washington, Government contract work and other work, to maintain a Washington office may get by without reporting and the small

business somewhere that certainly doesn't have enough business in Washington to retain an outside organization and then has a legislative problem doesn't have its own employees here to work on that problem and is going to end up retaining outside counsel and they're going to end up reporting when their major competitor might not have to report.

Mr. DANIELSON. Do you have a suggestion that would cure that inequity?

Mr. O'HARA. Yes; I do. It is with respect to the threshold test for organizations that conduct their lobbying activities through their own employees. Right now it says $2,500 and x number of days. You can make it $2,500 or x number of days and you can simply strike out the days test and apply the same dollar threshold to both.

Of course, there's a business element here, Mr. Chairman. Obviously those of us who are law firms, consulting groups, et cetera, who are engaged in these kinds of activities as a part of our overall operation, really don't want to see the Congress encouraging people to set up their own offices if it wouldn't make economic sense for them to do so.

Mr. DANIELSON. That would be competition, too, wouldn't it?

Mr. O'HARA. Sure.

Mr. DANIELSON. Go ahead.

Mr. O'HARA. That about sums up my testimony, Mr. Chairman.

Mr. DANIELSON. I appreciate it. Seriously, you've come right to the point on a couple of things.

I've been concerned, and maybe I'm wrong—we will work it out, argue it out in markup. I've been concerned that the 13-day time test which can be engineered is probably more of a delusion than something useful. I'm not sure. We are aware of it.

I am interested very much in your billing approach. We will certainly consider that very fully and the new record system should apply equally to retainees than anyone else, provided they keep an adequate record. But the Internal Revenue requires you keep a record anyway.

The gentleman from New Jersey, Mr. Hughes.

Mr. HUGHES. Thank you.

I would like to welcome our former colleague before this subcommittee and thank him for his testimony.

One of the complaints that you voiced in your statement and the complaint that I have heard frequently is the onerous nature of the recordkeeping provisions, particularly on smaller concerns. They often do not attempt to measure the specific time on projects during a given workday.

Do you have any suggestion as to how that particular complaint could be addressed?

Mr. O'HARA. Well, I don't have the final answer to it. I think with respect to an organization like mine, a law firm that works on behalf of clients, that our billing method is an hourly billing method and we keep track of the hours that our lawyers, both partners and associates, put in on the client.

And then we keep a separate account of those that are put in by the lawyers on lobbying type of activity, so we have all that. All of our overhead expenses are subsumed in that figure and I think it

would be much easier for us if all we had to do was continue to keep track, as we already do, of the hours we devote to the client's business and what hours are devoted to which type of business that the client has.

Mr. HUGHES. Of course that's because, as you indicated, you do bill on an hourly basis, but most organizations, I would presume, do not. Professionals, as a matter of course, do keep those type of records.

Mr. O'HARA. My feeling is that they do not. Probably the easiest, simplest way, although it may result in some overstatement of the amount devoted to legislative activities, is simply to say that a day on which a legislative communication is made, you can at least break out the days and that might be easier. At least it ought to be an option for the organization itself, or for the retained group that does not bill on an hourly basis.

That is to say, well, a day on which a legislative communication is made by one person, if they're not on an hourly basis, is a day that you ought to count for purposes of determining your lobby expenditures and whether or not you meet the threshold.

I don't think that the services of supporting staff ought to be counted. It really does cause too much recordkeeping complications.

Mr. HUGHES. Do you feel that the present approach to recordkeeping is going to encourage, perhaps, widespread abuse because it's going to require some internal allocation of time. Don't you think you will have more problems unless you have the type of rule such as suggested, that would say in effect that if there is a single communication in a given day, that that is counted as a full day of lobbying activity under the terms and provisions of the act?

Mr. O'HARA. I would like to draw this analogy. It's somewhat like the new, not the new, not so new any more, the current Federal election law. Both of you gentlemen have had to work under that law, and I would simply say to you, based on my own experience under it, that the recordkeeping and the picayune detail required is so onerous that it is nearly impossible, with the best of intentions and the best setup system, to get through a campaign without having in some way missed something or other. And I think it is a bad law and makes everyone a violator, including those that are making strenuous efforts to comply.

I really think it ought to be possible to comply with a simple, good-faith effort without having to tie yourself in knots.

Mr. HUGHES. Do you think that there should be some substantial compliance rule that would avert for the potential violator the sanctions, either economic or civil—certainly "criminal" would not apply—in the event there has been a good-faith effort to comply, and that any violation that is an oversight would not be caught within the web?

Mr. O'HARA. I think so, yes. I really do believe that and think you ought to do it, and I think the committee could give a little help to that by maybe rewriting some of the provisions of the law, not the major provisions but the provisions with respect to some of the details or else in the committee report spelling out the kinds of records that would suffice, and that sort of thing.

Mr. HUGHES. I couldn't agree with you more. I think that that is a telling point. I think that those of us that have to file very detailed financial records today fully understand the problems of those that have to comply with very technical rules that are often vague and ambiguous and subject to different interpretations. I thank you for that.

Let me ask you a broader question, if I might.

There has been some suggestion that the legislation is, strictly speaking, just overkill and that there is no relationship between requiring such detailed reporting on the part of lobbyists and lobby activities, and any public good that might come because of the reporting.

As someone who has served both as a legislator and now, obviously, in some lobbying activity, what is your view of the overall public good that can come of this type of legislation? Is it overkill?

Mr. O'HARA. That gets into an area that I'm sort of ambivalent about. I'm not sure we ought to have one of these laws but I am darn certain that if we have one, it ought to be a law that promotes accurate disclosure rather than misinformation as the current law does.

I'm embarrassed sometimes. We overreport at my firm. We lean over backward because we're afraid, we don't want anyone saying that we failed to report this, that, or the other.

But even so, when I see some of those reports, I kind of shudder because I know that's the impression they give, even though they're in exact compliance with the law and even though they may even go beyond the requirements of the law, they don't really accurately reflect in many cases how much work was put in on behalf of a given client.

So I think the present law is worse than no law at all. I don't know if we really ought to have a law. I think that involves a very tough question that I leave it to you to wrestle.

Nowadays when I get a question that is hard to resolve, I say, oh well, let the Congress take care of it. I don't worry about those things any more as much as I used to. But I do think that's a tough issue. But I'm saying if you're going to have one, have a good one, have a law that is——

Mr. DANIELSON. Mr. Moorehead, did you have questions of Mr. O'Hara?

Mr. MOOREHEAD. No; but I want to thank you for coming, though, and contributing to our hearing. We really appreciate your taking your time.

Mr. DANIELSON. Jim, I'm sure I'm right, but please help me. Your points are supported by your statement?

Mr. O'HARA. Yes; they are.

Mr. DANIELSON. Thank you very much.

[Witness excused.]

Mr. DANIELSON. Our next witness will be the U.S. Chamber of Commerce which is represented by Mr. Jeffery Joseph of Washington, D.C. and Mr. Fred Krebs of the William T. Stevens law firm, McLean, Va.

Gentlemen, you may proceed in whatever manner you wish. Without objection, your statements will be received in the record. You will be recognized for ten minutes in support of your positions.

[The complete statement follows:]

SUMMARY STATEMENT ON LOBBY REFORM LEGISLATION FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES BY FREDERICK J. KREBS, MARCH 21, 1979

The Chamber has serious reservations about the efforts to amend or replace the Federal Regulation of Lobbying Act of 1946. We find it incongruous that at a time when the American public is asking for less not more regulation, the Congress is considering extensive proposals to impose new reporting and recordkeeping requirements on organizations which seek to exercise their First Amendment Rights.

If any new legislation is enacted, it must meet the following criteria:

1. Coverage should be limited to direct lobbying.
2. There should be no compulsory disclosure of dues or membership lists.
3. There should be no criminal sanctions.
4. Reporting and recordkeeping requirements should be reasonable and practical.
5. There should be no chilling effect on First Amendment rights.

Any proposals to require disclosure of "grassroots" lobbying or contributor lists should be rejected as unconstitutional infringements of First Amendment rights. Criminal sanctions are inappropriate in the context of any law regulating the right to petition the government.

Every effort should be made to simplify and reduce the burdens of any new legislation. In this regard the "days" test threshold is the most practical. The definition of expenditure should be narrowed to reduce the recordkeeping burdens and organizations which rely, in good faith, on information provided by their employees and should be protected from any sanctions.

The Subcommittee should reject any legislation which fails to meet these criteria.

STATEMENT BY FREDERICK J. KREBS

My name is Frederick J. Krebs. I am an attorney with the McLean, Virginia and Washington, D.C. law firm of William T. Stephens, and former Assistant General Counsel of the National Chamber. Accompanying me is Jeffrey Joseph, Director of Government and Regulatory Affairs for the Chamber.

We appreciate this opportunity to comment on behalf of the Chamber and its more than 81,000 members on the various proposals to amend or replace the Federal Regulation of Lobbying Act of 1946. The treatment of this issue by the Congress will have a substantial impact on the ability of the Chamber and its members to express their views on important public issues.

INTRODUCTION

The Chamber has, in the past, recognized and testified on the inadequacies of the Federal Regulation of Lobbying Act. In addition, we have supported the enactment of a new law provided that such a law does not impose undue reporting burdens and infringe upon the basic constitutional rights of those individuals and organizations who seek to exercise their First Amendment right to petition the government.

After close and careful study of the attempts by the 94th and 95th Congress to enact lobby reform legislation, the Chamber has serious reservations about the effort to replace the 1946 Act. This is not an adverse reflection on the Members of Congress or the efforts of this Subcommittee, which is to be praised for its diligence and the many hours of effort it has expended in an attempt to develop a reasonable and constitutional replacement for the existing law. Rather, it is a recognition of the magnitude and difficulty of the task that you are undertaking.

We find it incongruous that, at a time when numerous Americans are speaking out against the burdens of regulation and the cost of increased government interference in their lives, the Congress would seek to pass new regulatory legislation that could seriously burden the ability of individuals and organizations to participate in the legislative process.

We must never forget—in the passion for "reform"—that the right to petition the government is the most basic of all our constitutional rights. The First Amendment says "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

It should also be emphasized that the public's right to know—the major justification for this legislation—is an inferred right which, unlike the right to petition the government, has not received specific constitutional protection and sanction. Of course, Congress, upon a proper showing of a compelling interest, may require

disclosure, in a limited fashion, of "direct" lobbying activities.[1] To date there has been no showing of a compelling interest sufficient to justify some of the extensive proposals under consideration.

It is the Chamber's position that if any bill is reported by this Subcommittee, it must adhere to the following criteria in order to meet minimal constitutional standards:

1. Coverage of the bill must be limited to "direct" lobbying. Indirect or "grassroots" lobbying must not be included.
2. The bill should not require disclosure, in whole or in part, of membership and contributor lists.
3. There should be no criminal sanctions in the bill.
4. The bill should not impose unduly burdensome and restrictive reporting requirements.
5. There must be no chilling effect on the exercise of First Amendment rights.
6. The bill should be fair and evenhanded in its coverage.

Failure to meet any one of these criteria would be sufficient justification to reject the legislation.

MAJOR BILLS

To date, several lobby reform bills have been introduced. These include H.R. 81 (Rodino, D-N.J. and Danielson, D-Cal.) which is the same bill as H.R. 8494, reported by the Judiciary Committee in the last Congress. H.R. 1979 (Railsback, R-Ill. and Kastenmeier, D-Wisc.) is essentially the same bill which passed the House in 1978. H.R. 2497 (Mazzoli, D-Ky.) is identical to H.R. 1979 except for the threshold test used to trigger coverage. H.R. 2302 (Kindness, R-Ohio) employs a different threshold and does not contain criminal sanctions, but is similar to H.R. 81 in its limited scope.

The remainder of our testimony will discuss certain basic issues or problems which the various proposals create.

"GRASSROOTS" OR INDIRECT LOBBYING

In addition to requiring an organization to register and report because of its direct lobbying activities, H.R. 1979 and H.R. 2497 also cover "grassroots" or indirect lobbying. H.R. 81 and H.R. 2302 do not include "grassroots" lobbying.

H.R. 1979 and H.R. 2497 would require an organization, which has already been required to register because of its direct activities, to report on all written solicitations or paid advertisements which are designed to reach more than a specified number of persons and which request the recipient to write their elected representatives on pending legislation. The information which must be reported includes a description of the issue (or copy of the solicitation), description of the method of solicitation, whether the recipients were asked to solicit others, the approximate number solicited (if the solicitation was by mail or telegram) and, for paid advertisements which exceed $5,000 in cost, an identification of the radio or television station or publication where the advertisement appeared and the total amount spent.

Such a proposal would impose a substantial and unnecessary burden on the numerous groups that would be covered. As the Washington Post noted in an editorial on Thursday, March 8, 1979 (a copy of the editorial is attached as Appendix A):

Every active group with legislative concerns—including trade associations, unions, universities, charitable societies and citizens' groups—would have to report to a federal agency on its meetings, mailings, advertisements, and other issue-oriented activities. Anyone suspected of non-compliance would be subject to federal audits, investigations and penalties.

Talk about overregulation! The paperwork would be incredible. Much more ominous is the whole idea that private groups should be compelled to report on perfectly legitimate communications with their own members, supporters and the public at large.

The purpose of this provision, according to proponents, is to close one of the so-called "gaping holes" created by the Supreme Court in *United States* v. *Harriss,* 347 U.S. 612, (1954). But, in *Harriss,* the Supreme Court construed "lobbying activity" to mean "direct" lobbying in order to avoid constitutional difficulties.

In *United States* v. *Rumely,* 345 U.S. 41 (1953), the Supreme Court determined that:

. . . The phrase "lobbying activities" readily lends itself to the construction placed upon it below; namely, "lobbying in its commonly accepted sense," that is, "representation made directly to the Congress, its members, or its committees," . . . and

[1] *U.S.* v. *Harriss,* 347 U.S. 612 (1954)

does not reach . . . attempts "to saturate the thinking of the community." 345 U.S. at 47 (citations omitted).

This interpretation was used in *Rumely* "in order to avoid serious constitutional doubt", 345 U.S. at 47—the identical rationale, as previously noted, subsequently used by the Supreme Court in *Harriss*. 347 U.S. at 620.

In the last Congress, after careful consideration, the Judiciary Committee agreed with this analysis, and deleted "grassroots" coverage from the bill reported to the House. The Report noted:

There is serious concern over whether this kind of action could constitutionally be regulated, since it so closely touches on the exercise of freedom of speech and rights of association. Consequently, the committee recognized the need to tread very lightly in this area, since a provision requiring disclosure must be drawn narrowly to be constitutional. Furthermore, once drawn, the resulting information disclosed would be of dubious value to either members or the public.[3]

It should be emphasized that the proponents of this type of coverage have not provided a compelling or valid reason to justify inclusion of "grassroots" lobbying in any new legislation. The mere fact that groups may engage in this type of activity is not sufficient justification.

It is exactly this exercise of rights which is protected by the First Amendment—the right to appeal to the people without fear of government harassment or intrusion.

One of the paramount reasons for the existence of voluntary membership organizations—trade associations, citizens' groups, environmental groups and others—is that they are able to provide their members with valuable information about what is happening in Washington. They also inform their members of the most opportune time to communicate their own views to their elected officials.

Groups such as these provide a vital service to their members. It is virtually impossible for people to be aware of all that is happening in Congress of special concern to them without such assistance.

There is no public interest in disclosing information about an organization's communications with its members. Such a requirement merely places unconstitutional burdens on those organizations which seek to inform their members and the public about what is happening in Washington. This activity should be encouraged rather than inhibited by the application of reporting and recordkeeping burdens.

DISCLOSURE OF MEMBERSHIP AND CONTRIBUTOR LISTS

Another proposal, which is of dubious constitutional validity, is the requirement that a registered lobbying organization disclose its major organizational contributors. H.R. 1979 and H.R. 2497 require the disclosure of each organization which contributes more than $3,000 annually to the registered organization if the registered organization spent more than 1 per cent of its total annual income on lobbying and the contribution was used in whole or in part for lobbying. [The actual contribution or dues payment may be disclosed by category or by specific amount.) Neither H.R. 81 nor H.R. 2302 contain any contributor disclosure provisions.

This disclosure provision would operate when the dues or contribution was used "in whole or in part" for lobbying and the total expenditures for lobbying exceeded one per cent of the registered organization's budget. It should be emphasized that in most associations, and many other volunteer membership organizations, only a small portion of contributions or dues payments may actually be used for lobbying.

Associations provide many services to their members and many companies join and support associations for programs and purposes unrelated to any "lobbying" efforts. For example, associations perform functions for their members in the following areas: (1) accounting; (2) advertising and marketing; (3) education; (4) employer/employee relations; (5) public relations; (6) research; (7) standardization and simplification; (8) statistics; and (9) consumer relations. Government relations, or "lobbying" is only one of many association activities. See "Webster, Law of Associations," § 1.04 (1976). In many cases the government relations function of the association is fulfilled merely by keeping its members informed about the existence, status and impact of particular pieces of legislation.

The compulsory disclosure of membership lists raises serious questions for all voluntary membership organizations. The underlying issue is whether an organization may be compelled to reveal the identity of some or all of its members (or contributors) merely because that organization exercised its First Amendment right to petition the government. In addition to this basic constitutional question, the disclosure of the amount of dues or contributions is of particular concern to many

[3] House Rep. No. 95-1003, 95th Cong. 2nd Sess. 49 (1978).

associations and their members. Such disclosure could reveal previously confidential and proprietary information about those members.

Individual dues data are treated as privileged and confidential by many associations. In these associations the dues may be based on production, sales, shipments, or other items that are not public information. Hence, publication of dues information which could readily be translated into one or more of these factors could not only breach essential confidentiality, but present a hazard under the antitrust laws.

Further, to publish names of members with dues allocations attributed to them for efforts to influence legislation would convey an unwarranted implication that each listed member supported, without reservation, any and all positions taken by the association. Indeed, some members may join and support the organization specifically because of programs and purposes described above, which are unrelated to any so-called "lobbying" activities.

It is widely recognized that compulsory disclosure of membership lists can have a significant "chilling" effect on the right of free association, e.g., *Buckley* v. *Valeo*, 424 U.S. 1, 64 (1976). Numerous cases have recognized this fact and upheld the confidentiality of an organization's membership lists. *NAACP* v. *Alabama*, 357 U.S. 449 (1958); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *Louisiana ex. rel Gremillion* v. *NAACP*, 366 U.S. 293 (1961). See also *Bursey* v. *United States*, 466 F.2d 1059 (9th Cir. 1972); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), aff'd 393 U.S. 14 (1968).

The *Buckley* case, which proponents of this type of disclosure cite as authority for their position, does not provide support for the broad membership disclosure provisions contained in these bills. The Federal Election Campaign Act, as amended, is a regulatory statute enacted to prevent certain abuses of the electoral process. The disclosure of the identity of contributors of $100 or more was upheld by the Court as necessary to enforce the contribution limits contained in the Act. However, the lobby reform legislation, if passed, will be a disclosure statute and not a regulatory statute. The lobby legislation is designed to make certain information public and not to prohibit any particular type of conduct.

As the Judiciary Committee noted in the 95th Congress, when it rejected any contributor disclosure provision:

The principal difficulty with requiring disclosure of contributors' identities is that there is no rational relationship between the mechanical formula used to trigger disclosure and the purpose that disclosure in general is supposed to serve: the disclosure of significant amounts spent to directly influence the legislative process. Advocates of such specific disclosure assnet [sic] that such a statutory requirement will identify the "major backers"—those individuals or organizations that put up the "front money"—of concentrated direct lobbying campaigns. Apart from the merits of that reasoning, the formula, however, does not (nor, the committee believes, can it) distinguish between those who pool their resources with the specific intent to directly influence legislation and those who associate for other reasons and whose money is neither sought nor received with such intent. The privacy and group associational rights of the latter would be most affected by a contributor-identity disclosure requirement. If a generous donor becomes hesitant to support an organization of his choosing in principal because the organization has incident to its general objectives, or may at some time in the future attempt to influence legislation, the benefactor's right to dedicate his resources to associational advocacy is prejudiced.[3]

Proponents of this provision argue that the limitation of the disclosure to organizations eliminates the constitutional infirmities. However, the Supreme Court has recognized that organizations as well as individuals possess First Amendment rights. See *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978). Furthermore, enforcement of this provision by the government would require access to the entire membership list of the organization. Thus, the constitutional problems discussed above will still remain.

CRIMINAL SANCTIONS AND ENFORCEMENT

H.R. 81, H.R. 1979 and H.R. 2479 provide for criminal sanctions for knowing and willful violations of the Act. Such sanctions are inappropriate for any law which would regulate activities protected by the First Amendment. The mere threat of criminal sanctions for violation of the Act's reporting requirements may be sufficient to deter many organizations from expressing their views, whether or not they are required to register and report.

In this respect, the approach of the Kindness bill (H.R. 2302) is the most appropriate. The recommendation of the Department of Justice that criminal sanctions be deleted is also worth noting. The Chamber strongly supports the deletion of any

[3] House Rep. No. 95-1003, 95th Cong. 2d Sess. 53 (1978).

criminal sanctions for violations of the Act. Civil sanctions are far more appropriate in the context of this legislation. Furthermore, sanctions should be applied only for knowing and willful violations.

The complexities of this legislation create the possibility of inadvertent errors and any such errors should not result in the imposition of sanctions. For example, as noted below, a person could inadvertently make a lobbying communication to a federal officer or employee without even knowing that he was doing so. Failure to report this activity could then result in a violation of the Act.

The Chamber has serious reservations about the Justice Department proposal to permit the Attorney General and other selected officials to issue a Civil Investigative Demand (C.I.D.) as a method to assist in enforcement. Although a C.I.D. may be appropriate in the context of the anti-trust laws, such an approach should not be adopted when dealing with the constitutionally protected right to lobby. The possibility of harassment and the imposition of undue burdens are too great.

The Chamber also strongly supports the concept that any new legislation should contain an informal method for resolving disputes between the government and persons subject to the Act. Such a conciliation mechanism would help to eliminate the potential chilling effect of this legislation.

OTHER PROVISIONS

A. Threshold

One of the major criticisms of the existing law is the lack of a clear and specific requirement as to when a person must register and report. Any legislation which is designed to replace the 1946 Act should contain a threshold or "trigger" which is clear, precise and easy to ascertain.

The Chamber supports the threshold contained in H.R. 81 and H.R. 1979. Although not perfect, the "days" test utilized in these bills is superior to the expenditure test contained in H.R. 2497. The days test in H.R. 81 and H.R. 1979 is the most practical and workable method of covering those persons who engage in substantial amounts of lobbying without sweeping in those organizations whose legislative activities are relatively isolated or sporadic.

B. Definition of expenditure

The Justice Department and others have proposed the deletion of overhead and similar items from the definition of expenditures to help simplify the reporting and recordkeeping requirements of the bills. We support such a step which would help reduce the reporting burdens of this legislation.

C. Reporting burdens

As noted above, the Chamber is particularly concerned about the imposition of reporting and recordkeeping burdens on the multitude of organizations which may be subject to this Act.

In this respect, we support several proposals to help reduce that burden.

Maintenance should be required of only such records as are essential for compliance with the Act.

We also suggest that communications between an organization and those Members who represent the state in which the organization has its principal place of business and between an individual and those Members who represent the state of that individual's residence should be excluded from the definition of lobbying communication.

We believe that the reporting and recordkeeping burdens of any new law should be reduced as much as possible. Accordingly, the Chamber will be offering additional suggestions to reduce and limit the burdens imposed by this legislation.

The Chamber also supports the concept that an organization which, in good faith, relies on the information provided by its officers, employees and retainees should not be subject to sanction for violations of the Act. This is particularly true in light of the difficulties noted below in determining whether a person is making a lobbying communication to a federal officer or employee covered by the legislation.

All of the bills discussed above contain good faith provisions. However, each is limited and a slight modification is necessary to make it clear that the good faith provision is applicable to the entire act and not just selected portions.

D. Definition of Federal officer or employee

H.R. 81, H.R. 1979 and H.R. 2497 limit the definition of lobbying communication to certain communications with a "federal officers and employees of Congress. Also included is "any officer of the executive branch of the Government listed in five U.S.C. sections 5312-16."

This definition highlights the complexities and difficulties inherent in this legislation. Very few people in Washington, let alone the remainder of the country, would

have any idea who is included within this definition. Yet, this knowledge is essential to those who must comply with the reporting requirements and who must face the threat of sanctions for noncompliance.

CONCLUSION

The Chamber has serious reservations about the efforts to amend or replace the 1946 Federal Regulation of Lobbying Act. We are deeply concerned about the costs and burdens of any new legislation and the chilling effect it might have on ability of individuals and organizations to exercise their First Amendment rights.

We urge this Subcommittee to reject bills such as H.R. 1979 and H.R. 2479 which would impose burdensome, unnecessary and unconstitutional reporting and record-keeping requirements upon a multitude of organizations which engage in legislative activities.

Although both bills contain serious flaws and are in need of modification, if Congress decides to replace the 1946 Act, H.R. 81 or H.R. 2302 are the more appropriate starting points for this effort. However, any new legislation must be carefully drawn and limited in its scope and application in order to be practical and constitutional.

TESTIMONY OF FREDERICK J. KREBS, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY JEFFERY JOSEPH

Mr. KREBS. I'm an attorney with the law firm of William T. Stevens, and with me is Jeffery Joseph, who is the director of government and regulatory affairs for the chamber.

In addition to our statement, we have an additional editorial that appeared in the Post the other day that we would also like to have included in the record.

Mr. DANIELSON. Would you tell us what it is? We may already have it, and redundancy is unnecessary.

Mr. KREBS. It's Thursday, March 8, 1979, and the editorial is entitled "Liberty for Lobbies."

Mr. DANIELSON. I tell you what. We will receive it as being lodged with the committee if we do not yet have it in the record. Then without objection, it will be received in the record. If we already have it, we will not have it twice.

Mr. KREBS. Thank you.

[The complete editorial appears on p. 159.]

Mr. KREBS. I would just like to make a few brief remarks and summarize the points made in our statement.

The treatment of the various proposals to replace the Federal Regulation of Lobbying Act of 1946 will have a significant impact on the ability of the chamber and its diverse membership to express their views on important public issues.

We have in the past testified on the inadequacies of the 1946 act. In addition, it has supported the enactment of a new law, provided that such a law does not impose undue reporting burdens or infringe upon the constitutional right to petition the Government.

After close and careful scrutiny of the efforts of the 94th and 95th Congress to enact lobby reform legislation, the chamber has serious reservations about the effort to replace the 1946 act. This is not intended to be an adverse reflection on this subcommittee, which is to be praised for its diligence and the many hours expended in an attempt to develop a reasonable and constitutional replacement for the existing law. Rather, this is a recognition of the difficulty and magnitude of the task you are undertaking.

We find it incongruous that, at a time when numerous Americans are speaking out against the burdens of regulation and the

cost of increased Government interference in their lives, the Congress would consider legislation that will seriously burden the ability of individuals and organizations, both large and small, to participate in the legislative process.

The American public is overregulated and any new lobby bill will greatly increase this regulation and intrusion into their lives. The effect of this legislation will be that many small groups, business, citizen and others, will not participate rather than attempt to comply with complex reporting and recordkeeping provisions.

Congress should be considering legislation that encourages, not discourages participation in the legislative process. It is in the best interest of the public and the Congress that the Congress hear from people on all sides of an issue, business, labor environmental, public interest groups, et cetera, any one who wants to express their views.

Unfortunately, the proposals you are considering will have a restrictive effect on this process.

The basic rationale behind this legislation, the public's right to know, is an implied or inferred right; surely that implied right must give way or defer to the right to petition the Government, which is specifically protected by the first amendment.

Unfortunately there also appears to be more disquieting motive behind this legislation. Comments made during consideration of the legislation last year indicate that some persons view disclosure as a way to burden or embarrass those groups they disagree with or whose lobbying efforts they find troublesome.

Of course, the Congress may require disclosure of direct lobbying activities, but such disclosure must be limited. To date, there has been no showing of the compelling interest necessary to justify the extensive and burdensome provisions under consideration.

We are not convinced that the replacement of the 1946 Act, despite its inadequacies, would result in an improvement in the legislative process. However, if, and I emphasize the "if," any legislation is reported by this subcommittee it must adhere to the following criteria in order to meet minimal constitutional standards:

First, coverage of any bill must be limited to direct lobbying. "Grassroots" lobbying or solicitations cannot constitutionally be included within the scope of any new legislation. Like the recent editorial in the Washington Post, we find it ominous that private groups should be required to report to the Government on legitimate communications with their members and the public at large.

Second, any new legislation should not require disclosure of contributors, whether organizations or individuals. Such disclosure infringes upon basic first amendment rights and would reveal previously confidential and proprietary information about members of numerous trade associations.

Third, there should be no criminal sanctions. In this respect, in our statement the reference to any criminal sanctions should be amended to include title 18, United States Code, section 1001. Criminal sanctions are entirely inappropriate in the context of this type of legislation. The mere existence of such sanctions, when combined with the inherent difficulties in applying this legislation

would have a drastic inhibiting and chilling effect on many small businesses and other groups.

Fourth, every effort must be made to reduce the reporting and recordkeeping burden. Numerous amendments are necessary to all the bills in order to achieve this goal. For example, it should be clear that preparation and drafting of materials are not included within the bill's scope. Also overhead and similar items should be deleted from the definition of expenditures.

Fifth, the legislation must not have a chilling effect on individuals and organizations who seek to exercise their rights. Unfortunately, all the proposals currently before you will have just that effect.

There are numerous other problems, questions and issues raised by this legislation. In the interest of time, I would merely refer you to our detailed statement for further discussion of these items.

There's one more point that I would like to make and that is we, we being the chamber, strongly support the concept of the days method, threshold, and trigger coverage of the bill. We recognize that it's not a perfect test, but on the other hand, we think it is probably the easiest and the simplest for organizations to comply with.

In conclusion, I would like to reemphasize our serious reservations and concerns about this entire effort. The costs and burdens of the proposals, the possible infringement of rights guaranteed by the first amendment, and the chilling effect are uppermost in our minds.

It is our belief that all of the bills presently before the subcommittee are inadequate in their present form and should be rejected. If this subcommittee decides it is necessary to replace the 1946 act, H.R. 81 or H.R. 2302 would be appropriate starting points. However, the chamber believes that this subcommittee should reject any bill which fails to meet all of the criteria which I have summarized.

Thank you for your time.

Mr. DANIELSON. Thank you very much.

You had no separate presentation, Mr. Joseph? Is that correct?

Mr. JOSEPH. That's correct.

Mr. DANIELSON. Mr. Moorehead, you are recognized for 5 minutes.

Mr. MOORHEAD. Thank you.

Has the chamber of commerce made any study of the cost of complying with either H.R. 81 or H.R. 1979, as far as your organization is concerned?

Mr. KREBS. I am no longer with the chamber so I am not aware of a specific cost estimate. I know when we were working on the legislation last year, we tried to, rather than break out the cost, we roughed out some estimates of just the time that various proposals would require and, I believe, at that time we felt it would be necessary to hire at least one and maybe two additional people to just collate and track and put all the information together to comply with the proposals considered last year.

Mr. MOORHEAD. There is an exemption for travel expenses in H.R. 81 and H.R. 1979. Do you think that this kind of a provision is wise or not?

Mr. KREBS. I think, as I indicated, we should probably simplify and cut out as much of the reporting as possible. I would think that with respect to travel expenses, that could be viewed as a possible loophole for some organizations to bring someone in to, in effect, have them on travel status and not have to report those expenditures.

The way I would suggest to handle that would be to have some sort of limit—someone couldn't be on permanent travel status—maybe 3 days or 5 days or something like that, have that type of limit on the exempt expenditures.

Mr. MOORHEAD. Your chamber of commerce has a number of affiliates. Would the various State chamber affiliates have to register separately?

Mr. KREBS. Well, the chamber is a membership organization and, contrary to popular belief, we have no control or say over the 80,000 members, and among those are 3,000 State and local chambers. They act entirely on their own, so it is very conceivable that they could be required to register under this legislation, whatever the necessary trigger provisions are, if they would exceed them.

Mr. MOORHEAD. As could any local chamber of commerce if they were active on the Federal level, like Cleveland or the New York chamber.

Mr. KREBS. That's correct, and that's one of the major concerns that we have had with the legislation in that, as everybody knows, we encourage our members to write and we encourage our members to become involved in the legislative process.

And one of our biggest fears is that if they perceive or feel that they can be covered by this type of legislation and report because of it, they would drop out rather than participate.

Mr. MOORHEAD. Does the chamber spend a substantial amount of money on grassroots lobbying each year?

Mr. KREBS. I don't know the figures. I really don't know. We have an extensive grassroots effort. I'm sure you are well aware of it. You've seen some of the material we send out. I really don't know the specific figures.

Mr. MOORHEAD. I noticed your concern in that particular area, and I just wondered whether it would greatly hamper your operation.

Mr. KREBS. Well, I think if there was that type of provision in the legislation, obviously we would comply with the legislation.

We have two problems, one from a philosophical point of view. We feel that type of coverage would be unconstitutional.

Second, we do feel that it would impose a certain burden upon us and upon the people that have to collect all of that information and data to enable us or any organization to comply.

Mr. MOORHEAD. Do you think that the money spent in the preparation and drafting of proposals, letters, and so forth should be included in determining the threshold?

Mr. KREBS. From our perspective and my own personal view, I don't think preparation and drafting of any type should be covered in the legislation. I think that what you're doing there is imposing a tremendous practical burden on anybody attempting to comply because of just the way things work.

You may prepare a memo. You may prepare material at three or four different times over, say, a 3-month period, and then you bring all that material together and you use it in a lobbying communication. It would be difficult, if not impossible, to go back and track time spent, preparation, et cetera, and include it in a report.

Mr. MOORHEAD. We're concerned about the requirement of reporting dues and contributions. Do your members all know the amount of dues that other members of your organization pay, or are they all the same?

Mr. KREBS. They do not know. We have a suggested dues structure with a minimum. Beyond that, any organization is free to pay as much dues as they see fit, in effect. We keep not only how much dues is paid but we keep our membership lists confidential.

If an individual organization wishes to indicate that they are a member of the national chamber, that's fine and that's up to them. We will never reveal the name of any organization or any member of ours, because we feel that's confidential information.

Mr. MOORHEAD. Do you think it might hamper you in any way in the collection of larger amounts from some businesses if the record was disclosed of the amounts that each one paid?

Mr. KREBS. We think it would, and I can give you two concrete examples, I think, that I was familiar with while I was there, and those are that occasionally we have taken unpopular positions. One such instance, although it was a misinterpretation, I guess, of our position, but it had to do with the Arab boycott legislation a few years ago, and we were getting a tremendous amount of pressure to find out who our members were, the intent being, we felt, to then bring pressure on them for their membership in the chamber.

The same situation, I believe, occurred, I think, during the consideration of the labor law, reform legislation last year.

Mr. MOORHEAD. Do you think the same kind of pressure might be present against other organizations who might, on occasion, take some very unpopular position so that they might no longer have the money to express the position they have?

Mr. KREBS. Obviously the chamber is a large and rather mainstream organization, I guess, and yet we feel the pressure could be brought on us. I'm sure that the smaller organizations that are, I don't know, not as much of an establishment organization—or however you want to phrase it—could easily have pressure brought to bear on them and could easily suffer as a result of the disclosure provision.

Mr. DANIELSON. I believe the time of the gentleman has expired.

Mr. HUGHES. Thank you, Mr. Chairman.

I gather from your testimony that you would eliminate preparation and drafting, among other things, from threshold communications. I wonder if you could tell us what the chamber would have included as those initiatives that should be computed in determining whether an organization meets the threshold limit.

Mr. KREBS. Well, the approach that we favor is the days test, on the grounds that this is easiest and simplest.

As Mr. O'Hara was saying, you make one communication on one day and you may be overstating the total amount but it is the cleanest and the simplest and easiest way to track.

In that respect we would take the days approach and use it in terms of an employee who has made lobbying communications on 13 or more days during a lobbying quarter, and that is the approach we would use.

Mr. HUGHES. You would eliminate the monetary threshold altogether?

Mr. KREBS. Well, I think that could be used in conjunction with the days test. From our perspective, we feel, I think, the key element is the days. The monetary approach for us or for the chamber, I would assume that we had people, and we do have people making those communications. We would exceed that automatically.

I think there might be some value in the monetary approach for smaller organizations, maybe a local chamber or some smaller organizations—that may help to keep them out from under the scope of the legislation.

Mr. HUGHES. Let me see if I understand it. I'm a little confused.

Does the Chamber support using the monetary test or not?

Mr. KREBS. You've two thresholds: One for your outside people and one for your in-house people.

With respect to the lobbying by in-house people, we like the threshold that is contained in H.R. 81, which is a combination days test and monetary test.

We have no objections if that same approach was also used for our outside people or hiring outside people.

Mr. HUGHES. Let me ask you, would you support a requirement in the bill that would in effect state that if in a given day any lobbying communications are made that that counts as a full day?

Mr. KREBS. That is the way the test is addressed, I believe, in H.R. 81 now. We would like to see the threshold raised in terms of—to make certain that only major, active organizations, say, like the chamber and others who are here in Washington—very active in the process.

Mr. HUGHES. You like $2,000?

Mr. KREBS. Not so much. Perhaps with the threshold, perhaps if it is raising the presumption of what one day is, maybe taking one and one communication adding to that. We would like to have the threshold increased. We're going to be covered under any legislation but what we are concerned about are our smaller members and our members.

Mr. HUGHES. I understand, but I understand that you do support the presumption that is implicit in H.R. 81, which would say in effect that if there is any communication on a given day, that counts as a lobbying activity.

Mr. KREBS. We do.

Mr. HUGHES. Thank you very much.

Mr. DANIELSON. I have only a couple.

In your statement you have used expressions "us," "we," and "chamber." Are they synonymous, interchangeable?

Mr. KREBS. Yes, they are.

Mr. DANIELSON. You have also stated that with the $2,500 monetary threshold the chamber would pass or reach it automatically. I presume from that I could assume that you would feel that you

would spend the $2,500 at least in a quarter, or so close that you might as well assume that you are spending it; is that correct?

Mr. KREBS. I would assume that if you take that in conjection with the idea of the days test and number of people who may be making communications and if you have to extrapolate from that their salaries, yes.

Mr. DANIELSON. You described all of the bills as being inadequate. Do you mean by that that they are not strong enough or that they are too strong?

Mr. KREBS. At the present time we think that all of them, if you want to use the words "too strong," we would use the word "burdensome."

Mr. DANIELSON. But you used the word "inadequate." From that I would be justified in believing that you want us to make it more burdensome; is that correct?

Mr. KREBS. No. We wouldn't want——

Mr. DANIELSON. Then you might say "inadequate" in your terminology means more than adequate?

Mr. KREBS. If burdensome is adequate, that's not the approach we are taking.

Mr. DANIELSON. I think I understand what you are driving at.

The last point is title 18, United States Code, section 1001. I know that I brought up that section a few weeks ago. Since then, with increasing frequency, that section has been referred to as something to be avoided at all costs.

I think if we discuss section 1001, we have to do it in its own context. It is a criminal law. It makes it a felony willfully to make a false statement on a matter within the jurisdiction of the U.S. Government, within the jurisdiction of an agency. "Willfully" is a big, strong word that means that, you know, this is against the law; and knowing that it's against the law, you decide to set out deliberately and perversely for the purpose of breaking the law. It requires the intent to evade or to violate the law.

If you were to know that filing a false statement is against the law and you say, "Aha, that's the law I don't like. I just going to go right out and break it." So you drum up a totally false statement, swear to it, file it. Do you think that it would be really expecting too much to hold that person culpable for a criminal act, a felony?

Mr. KREBS. You're presenting obviously a severe situation.

Mr. DANIELSON. That's the only kind that comes under section 1001.

Mr. KREBS. Our concern with the whole idea of criminal sanctions is not so much the situation that you've described but the perception of someone who's perhaps less sophisticated in dealing with filing reports with the Federal Government.

Mr. DANIELSON. And you mean this person wouldn't realize that he was deliberately breaking the law?

Mr. KREBS. No, no. It may be the perception that if we file—they may feel that if we file an improper report, we are going to be subject to criminal sanctions. That is the perception they may have. It may be wrong. It may be totally incorrect, but the fact is that mere perception could then affect them in such a way, along with the just basic reporting requirements, that, rather than lobby or rather than write, they would just not get involved.

Mr. DANIELSON. I understand your point.

Mr. Kindness?

Mr. KINDNESS. I apologize for my tardiness this morning.

Mr. Krebs, on this point of criminal sanctions, the concern has been expressed that there might be circumstances in which people acting in behalf of or in association with religious organizations might be persuaded that they have an absolute constitutional right to make lobbying communications, if you will, to Members of Congress. They would be obligated to comply with a law that they believe to be unconstitutional, and we might face cases like that in a criminal action.

I wonder if you have any comment on that area of criminal penalties and their appropriateness.

Mr. KREBS. Just that I would agree with you that that possibility does exist. I don't really have any comment beyond that. I'm not a criminal lawyer. I'm not that familiar with the religious associations, as such, so as to have become exactly involved in it.

Mr. KINDNESS. There could, in fact, be questions that arise also with respect to the first amendment right of freedom of the press, where people would make what they believe to be a publication and yet it could be construed as lobbying. Might an effort be made to assert the criminal sanctions against them?

Is that not also a possibility if criminal sanctions were included in the bill?

Mr. KREBS. I think it is. There are a lot of, or there will be a lot of gray areas with this legislation, and one of the difficulties will be in just applying it and making honest determinations that the GAO or the Justice Department could also honestly disagree with, and with the possibility of sanctions, criminal sanctions, that something is bothering us and I think could have an adverse effect.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. Thank you. I apologize for being at another hearing while you were presenting testimony, but I'm familiar with it.

Is the chamber of commerce a registered lobbying organization currently?

Mr. KREBS. The chamber as an organization is not registered. However, there are numerous people on the chamber's staff who are registered.

Mr. HARRIS. I don't quite understand that. The chamber is not a lobbying organization but there are people on the staff that are lobbyists?

Mr. KREBS. Under the *Harriss* case, which I'm sure you are familiar with, and the principal purpose test, the chamber's principal purpose is not lobbying. It is defined in the *Harriss* case, and the chamber is not registered.

However, there are individuals on the staff whose purpose is to lobby. Those people are registered.

Mr. HARRIS. How many lobbyists do you have registered?

Mr. KREBS. It would probably vary from quarter to quarter. There are normally at least five or six period registered. It can go up or down, depending on how active the particular individuals are on the particular issues.

Mr. HARRIS. What is that break point? What point do you have one of your employees registered?

Mr. KREBS. I don't know that bears a specific break point. I think you have to look at each situation in its individual context.

The *Harriss* case and the law is somewhat vague in this area, so it's difficult to just put out a specific line and say when you cross that you are required to register. So we try to look at the total picture with respect to each employee, see what he's doing, and then make a determination.

Mr. HARRIS. What do you make a determination on? Do you have some rule of thumb that you use?

Mr. KREBS. I think the determination is made essentially on how much time that that individual would spend making direct communications with members.

Mr. HARRIS. But what do you figure? If he's spending most of his time, is that it?

Mr. KREBS. I am no longer with the chamber. I'm not sure specifically the test they are using—I mean specific time. I don't know if they have a specific time, like 24 hours. I think they look at it just in terms of if this person is several days or a week up in making communications with Members of Congress, then that person is going to register.

Mr. HARRIS. Mr. Joseph, you're still with the chamber, aren't you?

Mr. JOSEPH. Yes, sir.

Mr. HARRIS. Could you enlighten me on this question?

Mr. JOSEPH. Basically, the way we are structured is we are broken down in issue areas and there are staff people in the organization who are responsible for being experts on certain subjects.

Mr. HARRIS. You still call this "departments," don't you?

Mr. JOSEPH. It depends pretty much on what the workload of Congress is. If there's an issue which is really in the forefront that someone in the chamber might be associated with, then that might be the only issue during the course of the Congress that the person is working on a congressional context, and that person suddenly pops up and becomes a person who gets added to the list of those who are lobbying.

It could be that for the rest of the 2 years, that person is working on projects which have nothing to do with the scope of the legislative process, and so you have to really assess what the priority of the Congress is and how, as that time changes, how the people on the chamber staff are interacting and where they spend their time.

It's clear to us that those people who are actively involved in an issue which was certainly moving through the Congress and if those people who have different styles everywhere, including our organization, and there are some people who have legislative responsibility who are not as visible as others, and so we have to basically assess on a 1-to-1 basis those people who really meet the clear intent of what a lobbyist is and what he does from those who don't.

Mr. KREBS. And just to expand on that, you are, I think, asking is there a hard and fast line. There's no hard and fast line.

Mr. HARRIS. I don't insist on a hard and fast line. I just wanted to know how you made the decision.

Mr. KREBS. Initially our people whose job descriptions are legislative—Hill counsel they are called.

Mr. HARRIS. What are they called?

Mr. KREBS. Hill counsel, legislative counsel. They are automatically registered. People in those positions are automatically registered because of the nature of their position. There are four of them.

Mr. JOSEPH. They are on the Hill full time.

Mr. KREBS. They are on the Hill full time. The issue managers as such, the other people, as just indicated, will register, depending upon the nature of what they are doing in a particular quarter.

Mr. HARRIS. If foreign trade legislation comes up, you say you'll probably be working with the Hill quite a bit, you probably should register. Is that what you do?

Mr. KREBS. That's correct. Some people have responsibilities for issues, but they do not necessarily come up to the Hill and do not necessarily engage in direct lobbying communications, with Members. They spend most of their time analyzing the legislation and studying its impact, that type of thing.

Mr. HARRIS. And preparing the legislative liaison people to do the work on the Hill, drafting statements, and doing research on the issues, and that sort of thing?

Mr. KREBS. That's correct.

Mr. HARRIS. Don't you think that, having had direct experience with the existing law, do you feel that this registration is pretty much valuable, or do you feel that this existing law should not be improved as far as charity is concerned, as far as definition is concerned, as to who should register and who shouldn't?

Mr. KREBS. We have testified in the past on the inadequacies of the existing law, but as I indicated this morning, we also are not entirely convinced that anything that's drafted is going to necessarily improve the legislative process that burdens it and the potential detriment of any new legislation is not going to outweigh the benefits.

Mr. HARRIS. The burden of that testimony is, then, that you recognize that the existing law is inadequate but you don't know how to improve it?

Mr. KREBS. We are not certain, at least these proposals, we are not certain that they would necessarily improve the situation.

Mr. HARRIS. And you have no proposals to improve it?

Mr. KREBS. We have indicated that there are certain things that we feel should not be done, that we don't feel definitely wouldn't be an improvement and we have indicated those.

Mr. HARRIS. Do you advocate legislation improving the current act?

Mr. JOSEPH. Yes. We see that there are inadequacies in the 1946 act. We think that as an organization we are trying to do our best to give the Clerk of the House and the Secretary of the Senate an adequate picture of what we are trying to do.

It's no secret what we do. We don't hide it.

Mr. HARRIS. You brag about it?

Mr. JOSEPH. That's right. Any trade organization is trying to tell its members what it's doing for them, so it's really no secret what's going on in Washington.

However, the concern is that most of the legislative proposals seem to contain vague or ambiguous language. We have people in the building who assist in terms of running Xerox machines or printing presses or if you really try to figure out who is doing what for your research in the course of a year, who may be involved in an issue that's in the Congress for 1 month but during the other 11 months does x number of other projects which some time later they will pick up, it becomes a real zoo in trying to keep track of everyone, to keep up with what they are doing.

We feel that any effort made to improve the 1946 act must keep in mind that for it to be realistic, it should try to be limited to the key players.

Mr. HARRIS. Mr. Chairman, to hopefully make the bottomline point on this, I think anyone like the chamber, whether the chamber registers or not, makes very little difference. The chamber is an out-front lobbying organization and the act really doesn't go towards whether or not the chamber registers. It doesn't make that much difference.

I think anyone who has had experience with the act as a chamber has recognized that the act right now is largely voluntary. There's very little chance of enforcing the current act and as any reputable lobbying organization would seem to recognize, those that aren't quite as out front and what-have-you, is there a way to get those to register like the chamber does?

Mr. JOSEPH. The concern we have got is that we don't want to inhibit all the people who want to do what we do but don't have the resources for doing it.

Mr. DANIELSON. Thank you, Mr. Harris.

[Witnesses excused.]

Mr. DANIELSON. The committee will welcome Mr. Sheldon E. Steinbach, general counsel, American Council on Education.

Mr. Steinbach, we have your statement and you may proceed accordingly. The Chairman has limited witnesses to 10 minutes.

[The complete statement of Mr. Steinbach follows:]

SUMMARY STATEMENT OF THE AMERICAN COUNCIL ON EDUCATION ON H.R. 81 AND COMPANION BILLS TO REGULATE LOBBYING

A lobbying law drafted without sensitivity to the unique nature of higher educational institutions could adversely impact colleges and universities without resolving the legitimate concerns of the Congress.

1. The threshold for being considered a lobbying organization should be kept as high as possible in order that only those organizations which are intensively engaged in lobbying would be covered. We propose a threshold of one percent of total expenditures for 501(c)(3) organizations as a benchmark which would cover only those institutions which engage in a significant level of lobbying

2. Lobbying communications with all members of the state congressional delegation should be exempt from reporting requirements since at most institutions, the units of the university as well as its influence are statewide.

3. Executive branch lobbying should be treated in separate legislation.

4. 501(c)(3) organizations that do not elect to file an expanded lobbying report permitted under the Tax Reform Act of 1976 should be permitted to file IRS Form 990 in lieu of any other reporting requirements.

5. Bona fide philanthropic organizations, which may exceed the lobbying threshold and which receive deductible charitable contributions for the furtherance of their tax exempt purpose, should not be required to report individual contributions.

TESTIMONY BY AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES, AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN UNIVERSITIES, ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, COUNCIL FOR THE ADVANCEMENT OF SMALL COLLEGES, NATIONAL ASSOCIATION OF COLLEGE AND UNIVERSITY BUSINESS OFFICERS, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES, NATIONAL ASSOCIATION OF SCHOOLS AND COLLEGES OF THE UNITED METHODIST CHURCH, AND THE NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

My name is Sheldon Elliot Steinbach and I am General Counsel of the American Council on Education, an organization representing over 1,400 colleges, universities, and associations in higher education. I am appearing before you today on behalf of the higher education associations noted on the cover sheet of my testimony to present our consensus position concerning the lobbying disclosure bills that have been introduced in the 96th Congress.

The thrust of all proposed lobbying disclosure legislation is to ensure that organizations that communicate with Congress (and under some bills, the executive branch) register as lobbyists and disclose certain information about their activities. Colleges and universities are greatly concerned that the registration and reporting requirements contained in the proposed lobbying legislation would change the character of higher education without resolving the legitimate concerns of the Congress.

Colleges and universities are dedicated to teaching, research, and community service. Most of them, in pursuit of those goals, are organized in a highly decentralized fashion. Considerable autonomy is granted to schools, departments, and individual faculty members within complex institutions. To call such an institution a "lobbying organization" which is presumed to exercise monolithic control and absolute command over all its "employees" simply does not comply with the organization of higher education.

Unlike the hierarchical structure of a corporation, where a board of directors or officers can determine precisely who will represent the corporation's views to the Congress, the collegial nature of universities creates highly decentralized semiautonomous units. In this setting, it is virtually impossible to know in advance of all the "lobbying" activities undertaken by faculty, students, and administrators. We believe that a law drafted without sensitivity to the unique nature of higher educational institutions would present compliance difficulties and would be difficult for the government to enforce.

Universities, which by law are public charitable entities, are already constrained from devoting a substantial part of their activities toward attempting to influence legislation. They are also required to submit annual reports on their lobbying activities to the Internal Revenue Service. Under the proposed legislation these same groups would be subject to additional recordkeeping and registration requirements, but would be unable to pass on the cost of compliance or deduct them as business expenses. Instead, public charitable organizations would have to absorb the entire cost of compliance, thereby substantially reducing the resources available for their primary philanthropic activities.

EXTENT OF COVERAGE

One of the most critical areas of concern to the higher education community is the threshold for becoming a lobbyist. The higher education community believes that the threshold should be kept as high as possible, in order that only those organizations which are intensively engaged in lobbying would be covered. The legislation should take into consideration the fact that there are many small colleges and universities which may occasionally fall within the definition of a lobbying organization as they pursue a single matter of concern. By enacting a threshold of 1 percent of total annual expenditures for 501(c)(3) organizations, only those institutions which engage in significant levels of lobbying would be required to file reports beyond those already required by law.

AFFILIATES

A problem arises from the fact that the word "affiliate" means different things to different organizations. In many cases, the parent is actually controlled by the affiliates. For example, as it relates to higher education, are the lobbying activities of the colleges and universities attributable to the Washington-based education associations or to the contrary, are the associations' activities attributable to the institutions? Since the real issue is control, the problem of affiliation should not be of major concern. Under our proposed test, a lobbying expenditure should be reported by the organization that had the right to and did, in fact, decide to spend the money or to invest the time of the staff member.

LOBBYING COMMUNICATIONS WITH CONGRESS

Colleges and universities should be free to communicate with their own representatives and senators without having to keep time charts or other records. It may also be advisable to have this right extended to all members of the state congressional delegation, since at most institutions, the units of the university as well as its influence are statewide.

Many college officials communicate with members of Congress on an occasional basis regarding a specific issue. Consequently, during certain calendar quarters, a college or university might exceed the threshold on the number of congressional contacts or the number of lobbying hours. If such communications result in institutions being forced to register as "lobbying organizations" and to file quarterly reports, many institutions may intentionally limit congressional communications to contacts with their two Senators and their Representatives in order to avoid registering as lobbying organizations. Thus, the impact of the lobbying legislation might be to weaken the democratic process by restricting the right of institutions and individuals to petition their government.

From a practical point of view, it would certainly be detrimental to the legislative process to inhibit the exchange of ideas and information between institutions of higher education and the Congress. Although Congress offers interested parties the opportunity to testify officially on proposed legislation, not all schools can present their views, and not all of their Senators and Representatives sit on the appropriate committees to hear the testimony. Congressional delegations have been very receptive to statements regarding federal legislation affecting higher education. The prospect of being designated a "lobbying organization" may very well prompt college and university officials to curtail these communications. We believe such a decision would debilitate the legislative process.

For the above reasons, we recommend the following language be included in the exemption section: "Any communication with a member of Congress, or an individual on the staff of such member representing the state in which a 501(c)(3) organization making the communication has its principal place of business."

LOBBYING COMMUNICATIONS WITH EXECUTIVE AGENCIES

We support legislation which would confine the coverage of any lobbying disclosure bill to legislative activity. We are skeptical of any attempt to include contacts with the executive branch in a definition of lobbying. The nature of the administrative process demands treatment of this activity in separate legislation.

At any time on any given campus, there are often numerous faculty members who are in the midst of consulting with various federal agencies without specific knowledge of the president and other officers of the university. These officials may learn of contract or grant negotiations as the agreement approaches its final stages. During this period, a faculty member could expend numerous hours in consultation with executive branch employees. We suggest that consultation with federal agencies be deleted from any definition of lobbying communication. Surely where enforcement activity pursuant to any federal statute has been initiated by a federal agency and the institution is merely defending itself, it would be inappropriate to count the time negotiating with federal officials as lobbying.

REGISTRATION AND REPORTING REQUIREMENTS FOR LOBBYING

Registration and reporting requirements for lobbying may impose a major paperwork burden for charitable entities. Currently all 501(c)(3) organizations file an annual Form 990 with the Internal Revenue Service. This form requires an answer to the following question: "During the taxable year has the organization attempted to influence national, state, or local legislation or participated or intervened in any political campaign? If yes, attach a statement giving a detailed description of such activities and a classified schedule of the expenses paid or incurred and enter the total of such expenses here. Also attach copies of any materials published or distributed by the organization in connection with such activities."

We maintain that this provision, or one similar to it, is all that is required for organizations that by their very nature are not substantially in the business of lobbying. In addition, as a result of the Tax Reform Act of 1976, charitable entities which elect the lobbying option will fulfill reporting requirements that have not yet been published by the Internal Revenue Service. Institutions that exercise this option should be able to fulfill any reporting requirements of the lobbying law by completing the IRS form. Charitable 501(c)(3) entities that do not elect should be permitted to file Form 990 prepared by such organizations.

DISCLOSURE OF CONTRIBUTORS

A matter of extreme concern to the higher education community is the inclusion of any requirement that registering organizations must disclose the names of individuals from whom they receive in excess of a certain amount during the preceding quarter, if that income was expended in all or in part for lobbying. Inclusion of a provision that would limit disclosure of contributors to those organizations that spend one percent or more of their total budget on lobbying activities mitigates some of our concerns. However, we support legislation which deletes identification of individual contributors and recognizes that it is unnecessary to request information of bona fide philanthropic organizations that receive deductible charitable contributions for the furtherance of their tax exempt purposes. In 1969, Congress found that public charities as opposed to private foundations were accountable to the public and were not being used by contributors as fronts for lobbying. Therefore, Congress did not impose upon public charities the special provisions on lobbying expenditures which it imposed on private foundations.

Secondly, if public charities are required to disclose the names of large contributors, the effects could be serious. Donors who value their privacy would simply not make large contributions. Few donors are interested in having their names listed on a roster that is available to every fundraiser. No prohibition against the use of names of contributors filed with the Comptroller General can be effective. Once the contributor's name is placed on the registration statement, it is likely that he or she will be approached by a multitude of fundraisers. This requirement would discourage voluntary support for colleges and universities that currently receive $2.5 billion annually from private sources.

In conclusion, we reiterate that the threshold for lobbying activities should be set at the highest possible level and that reporting requirements should be kept to a minimum. In our system of government, the full exchange of ideas is deemed to be essential for enlightened decision making by Congress and the federal government. Colleges and universities should not be forced to choose between costly compliance and foregoing the right to redress of their grievances. A sound lobbying reform bill could avoid creating unnecessarily complex and costly recordkeeping and reporting requirements, while at the same time protecting first amendment rights.

TESTIMONY OF SHELDON E. STEINBACH, GENERAL COUNSEL, AMERICAN COUNCIL ON EDUCATION

Mr. STEINBACH. My name is Sheldon Steinbach and I am general counsel of the American Council on Education, an organization representing over 1,400 colleges, universities, and associations in higher education. I am appearing before you today on behalf of the higher education associations noted on the cover sheet of my testimony which you have accepted in the record.

I will present to you a condensed version of our consensus positions regarding the lobbying disclosure bill introduced in the 96th Congress.

Colleges and universities are greatly concerned that the registration and reporting requirements contained in the proposed lobbying legislation could change the character of higher education without resolving the legitimate concerns of the Congress.

Colleges and universities are dedicated to teaching, research, and community service. Most of them, in pursuit of those goals, are organized in a highly decantralized fashion. Considerable autonomy is granted to schools, departments, and individual faculty members within complex institutions.

Unlike the hierarchical structure of a corporation, where a board of directors or officers can determine precisely who will represent the corporation's views to the Congress, the collegial nature of universities creates highly decentralized semiautonomous units.

In this setting, it is virtually impossible to know in advance of all the lobbying activities undertaken by faculty, students, and administrators. We believe that a law drafted without sensitivity to the

unique nature of higher educational institutions would present compliance difficulties and would be difficult to enforce.

Universities, which by law are public charitable entities, are already constrained from devoting a substantial part of their activities toward attempting to influence legislation. They are also required to submit annual reports on their lobbying activities to the Internal Revenue Service.

Under the proposed legislation these same groups would be subject to additional recordkeeping and registration requirements, but would be unable to pass on the cost of compliance or deduct them as business expenses. Instead, public charitable organizations would have to absorb the entire cost of compliance, thereby substantially reducing the resources available for their primary philanthropic activities.

In view of the oral testimony and written statements of previous witnesses I would like to focus on two principal points of concern to the college and university community.

Colleges and universities should be free to communicate with their own Representatives and Senators without having to keep timecharts or other records. It is also advisable to have this right extended to all members of the State congressional delegation, since at most institutions, the units of the university as well as its influence are statewide.

Many college officials communicate with Members of Congress on an occasional basis regarding a specific issue. Consequently, during certain calendar quarters, a college or university might exceed the threshold on the number of congressional contacts or the number of lobbying hours.

If such communications result in institutions being forced to register as lobbying organizations and to file quarterly reports, many institutions may intentionally limit congressional communications to contacts with their two Senators and their Representatives in order to avoid registering as lobbying organizations.

Thus, the impact of the lobbying legislation might be to weaken the democratic process by restricting the right of institutions and individuals to petition their Government.

From a practical point of view, it would certainly be detrimental to the legislative process to inhibit the exchange of ideas and information between institutions of higher education and the Congress. Although Congress offers interested parties the opportunity to testify officially on proposed legislation, not all schools can present their views, and not all of their Senators and Representatives sit on the appropriate committees to hear the testimony.

Congressional delegations have been very receptive to statements regarding Federal legislation affecting higher education. The prospect of being designated a lobbying organization may very well prompt college and university officials to curtail these communications. We believe such a decision would debilitate the legislative process.

For the above reasons, we recommend the following language be included in the exemption section:

Any communication with a member of Congress, or an individual on the staff of such member representing the state in which a 501(c)(3) organization making the communication has its principal place of business.

Registration and reporting requirements for lobbying may impose a major paperwork burden for charitable entities. Currently all 501(c)(3) organizations file an annual form 990 with the Internal Revenue Service. This form requires an answer to the following question:

> During the taxable year has the organization attempted to influence national, state, or local legislation or participated or intervened in any political campaign? If yes, attach a statement giving a detailed description of such activities and a classified schedule of the expenses paid or incurred and enter the total of such expenses here. Also attach copies of any materials published or distributed by the organization in connection with such activities.

We maintain that this provision, or one similar to it, is all that is required for organizations that, by their very nature, are not substantially in the business of lobbying. In addition, as a result of the Tax Reform Act of 1976, charitable entities which elect the lobbying option will fulfill reporting requirements that have not yet been published by the Internal Revenue Service.

Institutions that exercise this option should be able to fulfill any reporting requirements of the lobbying law by completing the IRS form. Charitable 501(c)(3) entities that do not elect should be permitted to file form 990 prepared by such organizations.

In conclusion, in our system of government, the full exchange of ideas is deemed to be essential for enlightened decisionmaking by Congress and the Federal Government. Colleges and universities should not be forced to choose between costly compliance and foregoing the right to redress of their grievances. A sound lobbying reform bill could avoid creating unnecessarily complex and costly recordkeeping and reporting requirements, while at the same time protecting first amendment rights.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you.

Not having been present during your testimony, I obviously have no questions.

Mr. Hughes?

Mr. HUGHES. Thank you, Mr. Chairman.

I just want to thank the witness. His testimony was very clear. I have no questions.

Mr. DANIELSON. Mr. McClory?

Mr. MCCLORY. I have no questions.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you very much.

I'm a little bit uncertain as to the basis upon which an exception would be made for educational institutions or the justification for it, rather. Once you start down that path, then I can well imagine other organizations would assert the same need to be exempted or to be treated in some special manner under the law.

In the form 990 as filed with the Internal Revenue Service, the information that is required is a detailed description of the activities comprising the lobbying and a classified schedule of expenses paid or incurred, and the total amount. That doesn't require disclosure of the subject matter of the lobbying communications, does it?

Mr. STEINBACH. No, it does not, although I would imagine as one would report on it in any reasonable manner, obviously you would pinpoint the issues that you were lobbying on.

Let me state in response to your earlier question that perhaps we are taking this posture not only on behalf of the colleges and the universities but also looking at it in a broader spectrum in terms of all charitable entities that face a common problem.

Mr. KINDNESS. 501(c)(3) organizations?

Mr. STEINBACH. Yes.

Mr. KINDNESS. Let's go a little bit broader than that.

Would you think that the same rule, then, could reasonably be applied to all lobbying organizations that are required to file a form 990?

Mr. STEINBACH. One could, in your judgment, if you felt that would be sufficient to those kinds of organizations. I think insofar as the 501(c)(3) organizations are concerned, that they are distinguishable from your general corporate lobbying organizations in that they themselves are already restricted by the Internal Revenue Code from doing an excessive amount of lobbying.

As a matter of fact, in the performance of their function, if they did a substantial amount of lobbying, they would have their 501(c)(3) status revoked, so since they are doing such a minimum amount of lobbying by definition they become a classification of a group that could be, if seen in your judgment, being treated differently, so that you would not necessarily, if you opened up the door for specialized treatment for 501(c)(3) organizations, necessarily have to provide the same for all lobbying organizations.

Mr. KINDNESS. It seems to me that much of the contact that is made by or in behalf of the universities and colleges is made in writing rather than by visiting.

Mr. STEINBACH. If we could have a statewide exemption for contacts with your State delegation, I think a substantial amount of our problems would be alleviated.

Mr. KINDNESS. Thank you, sir.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Kindness.

I have one question that's been generated since I've been here.

You refer in your statement on page 5 to entities which elect the lobbying option. What does that mean? How do you elect a lobbying option as opposed to form 990?

Mr. STEINBACH. Under the Tax Reform Act of 1976, the so-called Conable amendment provides an option for charitable organizations that want to identify their lobbying activities to a greater extent than what is available under form 990. There has been a great deal of insecurity as you may be aware within the charitable community.

Mr. DANIELSON. Let me interrupt.

I don't know, if you elect something in my mind you have an option of two or more things. What are these two or more things?

Mr. STEINBACH. The two things that are available to you are to just file your form 990 or two if you feel that you have a greater amount of lobbying activity as allowed under the Conable amendment, you can elect to file a form that would——

Mr. DANIELSON. Is that the form you set forth in the first paragraph on page 5?

Mr. STEINBACH. The form, unfortunately, although it's almost 3 years later now, the Internal Revenue Service has not published the form.

Mr. DANIELSON. Under the law you have the option of filing the 990 or this other form.

Mr. STEINBACH. Or an expanded form. Unfortunately that expanded form is not yet available to us.

Mr. DANIELSON. But that's the lobbying option you are speaking of?

Mr. STEINBACH. That's it.

Mr. DANIELSON. Thank you very much.

I have no other questions.

Mr. McClory will introduce the next witness.

Mr. MCCLORY. Mr. Chairman, I thank you for accommodating me and our witness.

I want to say that we are very pleased indeed to welcome here a long-time friend and colleague in the public service, Tom Houser. He's had not only a distinguished career at the bar, but he has also served in important public office in Washington, as a member of the Federal Communications Commission and a deputy director of the Peace Corps. He served in the White House, in charge of telecommunications, and he has had very close association with several of our great political leaders, including Senator Charles Percy and former Secretary Don Rumsfeld. He is now general counsel for the National Association of Manufacturers and appears before us in that capacity.

I want to present him to the subcommittee and on behalf of all my colleagues, I say welcome.

Mr. DANIELSON. We thank you, Mr. McClory, for briefing us on the background of our witness.

I observe with pleasure that Mr. Houser is not only a lawyer but a prominent lawyer, so without objection, we will receive his statement in the record and just let him organize his case as well he can.

[The complete statement of Mr. Houser follows:]

SUMMARY OF TESTIMONY ON H.R. 81 AND COMPANION BILLS BY THOMAS J. HOUSER, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

1. Enforcement—NAM urges elimination of all criminal penalties including applicability of 18 U.S.C. Section 1001.

NAM opposes "CID" investigative provisions offered by Department of Justice.

2. Grass Roots—NAM remains totally opposed to any lobby bill which requires reporting of "grass roots" efforts of either individuals or organizations.

3. Membership Lists—NAM remains totally opposed to any lobby bill which requires disclosure of membership lists, dues or contributors, whether by individuals or organizations.

4. Reporting Burdens—NAM urges lessening of stringent "total expenditures" and "preparation and drafting" reporting requirements. Costs to NAM cited.

TESTIMONY OF NAM GENERAL COUNSEL, THOMAS J. HOUSER ON PUBLIC DISCLOSURE OF LOBBYING ACT OF 1979, H.R. 81, AND COMPANION BILLS

Good morning, Mr. Chairman. My name is Thomas J. Houser. I am the General Counsel of the National Association of Manufacturers. I would like to thank you, sir, for the invitation to appear this morning and testify on behalf of the 12,400 manufacturing companies which we represent. As you know, the NAM is registered under the present lobbying law and we currently file quarterly reports with the Clerk of the House and the Secretary of the Senate. In addition to our own experiences, many of our corporate members will be directly affected by lobby

reform legislation and I am here this morning to express their concerns to this subcommittee.

Even though I am rather new to this subject personally, my predecessor at NAM, Richard D. Godown, has testified before this subcommittee and others regarding NAM's views on lobby disclosure regulation. In view of the subcommittee's request that comments this morning be restricted to new matters, and because I understand that the subcommittee has available to it all previous testimony, I would direct the subcommittee's attention to NAM's prior testimony for our general views and restrict my comments this morning to four specific subjects—enforcement, grassroots, membership disclosure and reporting burdens.

But first, Mr. Chairman, I should like to make the subcommittee aware that NAM's Board of Directors adopted a resolution on lobby law reform at its January meeting this year. I have attached a copy of this resolution to my testimony and, because it expresses the total NAM position with regard to this legislation, I direct the subcommittee's attention to it specifically.

Now, if I may, I would like to address the four matters I mentioned.

ENFORCEMENT

H.R. 81 presently contains criminal sanctions for certain violations related to activities which are clearly and strongly protected by the First Amendment to the United States Constitution. Mr. Chairman, if I leave you with only one thought this morning, let it be this: The NAM continues to be strongly opposed to the inclusion of any criminal sanctions in any lobby reform legislation.

In this regard I find myself somewhat allied with the remarks delivered by Patricia M. Wald, Assistant Attorney General for Legislative Affairs, and strongly in agreement with Mr. David Landau of the ACLU, both of whom have testified recently before this subcommittee.

The NAM recommends that H.R. 81 be amended to eliminate all references to criminal violations. Further, and with this I am in disagreement with Ms. Wald, the NAM recommends that the civil penalties under H.R. 81 be the exclusive sanctions, to the express exclusion of 18 U.S.C. Section 1001. As you know, Section 1001 of the United States Criminal Code makes it a criminal violation to falsify certain reports. It is the NAM's strong conviction that lobby disclosure reports submitted pursuant to this legislation not be subject to such a heavy-handed sanction.

The NAM finds the civil investigative demand procedure suggested by Ms. Wald to be inappropriate for enforcement proceedings under this legislation and agrees with the ACLU on this point. We also feel that the Justice Department, rather than the General Accounting Office, is the appropriate agency for enforcement.

GRASSROOTS AND MEMBERSHIP LISTS

The second and third points I will address this morning are well known to this subcommittee and, therefore, I will not dwell on repetitious arguments. Rather, I will simply state that the NAM remains totally opposed to any lobby disclosure bill which contains any reporting requirements for grass roots solicitation activities, or contains any form of membership and dues disclosure, covering either individuals or organizations.

Mr. Chairman, no lobby disclosure bill, no matter how reasonable and acceptable in all of its other provisions, would be acceptable to the NAM if either of these patently unconstitutional provisions were included.

REPORTING REQUIREMENTS

Mr. Chairman, the fourth and final aspect that I would like to comment on this morning deals with the reporting requirements of H.R. 81. Quite frankly, we find the present reporting requirements terribly costly without being sufficiently informative to justify the burden. As you know, the NAM files quarterly reports under the present lobbying law. With regard to the collection and aggregation of salary and expenditures made by 25 to 30 employees who are presently registered as lobbyists, we calculate that management spends five professional man-days each quarter on this limited activity. Let me make it very clear that the total amount of time necessary to file reports under the present law, including recordkeeping by each lobbyist, is significantly greater. Should H.R. 81's present reporting requirements become law, and by this I am referring to the reporting of "total expenditures" and "preparation and drafting," NAM projects that the present five professional man-days will be at least tripled to 15 professional man-days each quarter. These 60 professional man-days each year would still not be the total amount of time necessary to comply with H.R. 81 because the lobbyists' time is not included; rather, this is NAM's estimate of the amount of effort necessary for management to

accumulate the "total costs" associated with preparation and drafting of lobby communications in an organization of 240 people.

I should point out that NAM will probably register under any new legislation and that I am necessarily excluding from these observations man hours related to determining whether the NAM crosses the "threshold." Many of our members are not so predisposed to register and, therefore, their recordkeeping expenditures would be significantly greater because they would have to keep track of days spent lobbying, as well as capturing total expenditures, even where they ultimately do not cross the threshhold.

Still with regard to reporting requirements, Mr. Chairman, I should point out that the present requirement under H.R. 81 for the reporting of "total expenditures" is absurd on its face. First of all, because of the arbitrary accounting allocations involved, this level of information is not meaningful to the Congress or to the general public. Second, the incremental burden to many organizations generating that information, especially in light of the preparation and drafting language of H.R. 81, is horrendous. And third, given the broad exemption for travel expenses in H.R. 81, the final numbers reported would not be comparable among various lobbying groups, a point well known to this subcommittee.

NAM is strongly opposed to the total expenditure concept and recommends, as an alternative, that lobbying organizations report only those costs which would not have been incurred unless the organization chose to lobby. I refer to this concept as the "but for" test and, because I know it has been discussed before, I recommend it for the subcommittee's consideration without making a full argument as to its merits.

Mr. Chairman, to conclude my remarks this morning, I hope that the various aspects of the NAM's views on this most important subject have been touched upon in such a manner that H.R. 81 will be amended to eliminate criminal sanctions and to reduce the reporting requirements. I further hope that this subcommittee will resist attempts to amend H.R. 1 by the addition of any grass roots or membership disclosure provisions.

I will be glad to answer any questions at this time.

Resolution on Lobby Law Reform Approved by the NAM Board of Directors

The Congress has been considering amendments to the 1946 Regulation of Lobbying Act. The National Association of Manufacturers agrees that the existing act is ambiguous.

The Constitution guarantees the right of free speech and the right to petition the Congress. The NAM believes that these rights impose an obligation on the business community and its organizations to speak out on legislation which will help or harm the interests of business and its employees and shareholders.

The NAM urges that any amendment of the existing legislation be based on the following points:

Registration requirements should apply uniformly to all organizations which engage in lobbying;

"Threshhold" requirements for registration and reporting, whether on a time or dollar basis, should be realistic;

Contact with the Executive Branch should not be covered:

Solicitation of others to communicate with Congress should not be a reportable event;

Disclosure of membership lists and individual organization dues or contributions should not be required;

Any communication with Members of Congress representing any or all of an organization's Congressional District(s) and State(s) should not be a reportable event;

Nothing in such legislation should restrict the Constitutional right of a citizen to petition the Congress on a personal matter;

Reporting and record-keeping requirements should be kept to a minimum in line with federal objectives to reduce such burdens substantially;

The Department of Justice should be the enforcement agency;

Inasmuch as the legislation would deal only with the reporting of legal activities, violations should carry only civil and not criminal penalties.

TESTIMONY OF THOMAS J. HOUSER, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY JOHN LUCAS, ASSOCIATE GENERAL COUNSEL

Mr. HOUSER. Thank you, Mr. McClory, for your kind introduction. It is good to see you looking so well.

Mr. Chairman, and members of the subcommittee, I'm general counsel for the National Association of Manufacturers. And with me here today is Mr. John Lucas, our associate general counsel. Mr. Lucas is well briefed on the issues before this subcommittee and in addition to that, he very specifically has the responsibility of preparing reports that are quarterly filed by the NAM.

In keeping with your desire, Mr. Chairman, to make our comments as brief as possible, in summary we will focus——

Mr. DANIELSON. Sir, we don't want you to leave out anything. It is just that I find when I hear a good lawyer argue his points, it seems to me like it makes a better impression. They register with us.

Mr. HOUSER. So long as you permit us to put the full testimony on the record, we will try to summarize as best we can. We will focus our summary comments on enforcement, the criminal sanctions, and the reporting requirements.

First, Mr. Chairman, I would like to make the subcommittee aware that the NAM board of directors adopted a resolution on lobby law requirements at its January meeting this year. I've attached a copy of this resolution in my testimony and because it expresses the total NAM position with regard to this legislation, I direct the committee's attention to it specifically.

With respect to enforcement, H.R. 81 presently contains criminal sanctions for certain violations related to activities which are clearly and strongly protected by the first amendment to the U.S. Constitution.

Mr. Chairman and members of the subcommittee, if I leave you with only one thought this morning, let it be this:

The NAM continues to be strongly opposed to the inclusion of any criminal sanctions in any lobby reform legislation.

In this regard I find myself somewhat allied with the remarks delivered by Patricia M. Wald, Assistant Attorney General for Legislative Affairs, and strongly in agreement with Mr. David Landau of the ACLU, both of whom have testified recently before this subcommittee.

The NAM recommends that H.R. 81 be amended to eliminate all references to criminal violations.

Further, and with this I am in disagreement with Ms. Wald, the NAM recommends that the civil penalties under H.R. 81 be the exclusive sanctions, to the express exclusion of 18 U.S.C. 1001. As you know, section 1001 of the U.S. Criminal Code makes it a criminal violation to falsify certain reports. It is the NAM's strong conviction that lobby disclosure reports submitted pursuant to this legislation not be subject to such a heavy-handed sanction.

At this point, Mr. Chairman, I would like to digress from my prepared remarks to share with you a tongue-in-cheek old proverb by an old philosopher, Frederick von Schiller, who states:

It is criminal to steal a purse, daring to steal a fortune, a mark of greatness to steal a crown.

The blame diminishes as the guilt increases.

What we are really talking about here, Mr. Chairman, is a little activity, an organization's right to petition its government which is protected by the first amendment. If we are going to assess criminal punishment upon what is essentially a legal activity, then I think we have to add to Von Schiller the statement that blame increases as guilt decreases.

Moreover, members of this committee, I would like to submit to you that it's going to be very difficult for any lawyer to be able to advise his client as to when they are in violation of the criminal sanctions provided in this act.

Let me specifically call your attention to the language that appears under the sanctions sections of the bill—I have it here—on page 20.

In section 11 there is the phrase "omits any material facts."

I would submit to this subcommittee that courts and lawyers are constantly arguing as to what constitutes a "material fact" and I don't know how a layman is going to be able to determine when he is dealing with a material fact when he's trying to sort out what constitutes "total expenditures" and what constitutes "activities" associated with lobbying.

At this point I'll turn the microphone over to our associate who will summarize our views on legal reporting requirements.

Mr. LUCAS. My function this morning is to deliver to the subcommittee my perception of the reporting burdens presently embodied in H.R. 81.

The National Association of Manufacturers is a registered lobbying organization under the present law. The number of our lobbyists varies between 25 and 30, depending upon assignment and employee tenure.

Our organization is approximately 240 employees strong. I would like to limit my observations to the concepts of preparation and drafting. I'm not concerned with the time of the lobbyists; I'm not concerned about the expenses reported by the lobbyists. Rather, I'm looking only to the burden of somebody and I am afraid it will be me who will assemble the information and assemble the costs to report total expenditure, a defined term, to include preparation and drafting of lobbying communications.

Presently, using the 1946 act, the quarterly requirement report is due 10 days after the close of the quarter. Under the present law, it takes me 3½ full working days plus two other people an additional 1½ days each quarter to assemble the information from 25 to 30 people. I believe we had 28 last quarter.

That information includes all of the expenditures under section E of the present form. That's 5 man-days a quarter, 20 man-days a year. That's 1 man-month. It's 1 working man-month under the present law.

If H.R. 81 is not amended to eliminate the concept of preparation and drafting, rather than working the materials and times and expenditures of 25 to 30 employees, I will have to work with 240 employees. Rather than 25 reports to me, I would have 240 reports. I get 30 days instead of 10 days and for that I'm thankful, but it is a fair statement because I've attempted it on a shakedown cruise method to do it. It is a fair statement, Mr. Chairman, that it will

take me and two other people a total of 15 days per man-days each quarter to comply with H.R. 81 as it is presently drafted.

Now, again, 60 man-days a year or 3 man-months does not include the time of the lobbyists in submitting the information to me. It does not include the time of the other 220 or 210 employees who have captured, aggregated, and submitted their individual reports. We are looking only at the aggregation of reports.

Quite frankly, sir, I would shudder to think of the aggregation of time that it would take all these other people.

Under H.R. 81 it is our perception that the time of the lobbyists, the individual who lobbies, will not change between the present law and the new law, so we'll consider that a constant period. We are looking, rather, at the value of the increased burden in reaching to these other nonlobbying people. We find that burden onerous.

The NAM has examined the problem and we feel that we must strongly recommend that the concept of preparation and drafting be excluded and that something more workable be included.

I would comment as a footnote to this that the NAM is not overly upset with the combination of days and dollars for the threshold. We think that the days test is reasonable. It gives us something we can work with. And the dollars is OK, assuming you tell us what's in there.

We have proposed an alternative to the preparation and drafting concept. I think in quotations we call it the "but for" test.

Mr. DANIELSON. Do you have a copy of your proposal?

Mr. LUCAS. Yes, sir. It is mentioned in our testimony. It has been discussed at length in the previous testimony submitted in the last several years by the NAM. We make reference to it. I understand that these papers are available to you. Should they not be, I will provide them to you.

Mr. DANIELSON. I'm going to request that you submit a copy of your proposal. We are hoping to get into markup as early as possible on this bill, and if we have things available to us, then rather than requesting them then, we could move a lot faster and hopefully meet people's objections.

Mr. LUCAS. Thank you very much, Mr. Chairman.

The concept that we are talking about is the reporting of expenditures, only those expenditures which would not have been incurred unless the organization lobbied. That eliminates many of the preparation and the drafting considerations, not all, many.

Mr. DANIELSON. We would like very much to consider your point of view and thereby to profit by the experience and the knowledge which you have available. I'm not saying we will necessarily adopt it, but then we might.

I yield to Mr. McClory as the leadoff questioner.

Mr. MCCLORY. Thank you.

Are you familiar with the legislation introduced by my colleague, Mr. Kindness?

Mr. LUCAS. Yes, sir, we are.

Mr. MCCLORY. You agree that that piece of legislation corresponds with your views?

Mr. LUCAS. It basically does, sir. I have not had occasion to do a dry run to determine how I would comply with it. The conceptual basis is improved.

I apologize. I have not brought Mr. Kindness' bill with us today so I do not have the bill before me.

Mr. MCCLORY. In connection with your legislative proposal or your initiatives that you think should be considered by this committee, would you mind indicating to us after you have gone over this bill carefully any suggestions you might have as to amendments that might be considered when we get to the markup stage?

Mr. HOUSER. We will be happy to do that. I might give you some advance indication of what our view will be.

If you will refer to our attached statement to the prepared testimony, the resolution that was passed by our board states with some specificity what our concerns are and the kind of legislation that we would have no reservation in supporting, but we will provide you with an additional statement.

Mr. MCCLORY. You made reference to the fact that you are unhappy about the fact that considerable penalties might be imposed under 18 U.S.C. 1001. That, as I understand it, is a general provision of the law that applies with respect to the filing of any false document with the Federal Government.

You do want us to revise that, do you, or say that it's applicable, all false documents filed with the Government except with respect to documents filed under some——

Mr. LUCAS. Mr. McClory, our concern with 1001 is primarily that of an organization which chooses to take a constitutional challenge to some provision of this bill and in accordance with that challenge submits a report which is insufficient as to the component challenged.

We are fearful of a grassroots solicitation coverage. I would suggest that some organizations, whether it be NAM or others, might file an otherwise appropriate report to the General Accounting Office and willfully and knowingly and with intention to violate the Lobby Disclosure Act of 1979, omit any reports required for grassroot solicitation.

While the constitutional issue is debated, that organization nevertheless is in violation under the most stringent test of 18 U.S.C. 1001. We would suggest not an overhaul of 1001 but, rather, that the civil sanctions presently in H.R. 81 and the other bills be exclusive, expressly exclusive of 18 U.S.C. 1001.

We would have this bill to the exclusion of that rather than an overhaul of the criminal code.

Mr. MCCLORY. Are there any documents filed with the Federal Government which would be excluded if they contained false statements? Do you know?

Mr. LUCAS. The IRS Code 501(c)(3) organizations have a particular problem. Trade associations are (c)(6). We do not have that problem.

Mr. MCCLORY. I want to concur with your views as far as grassroots lobbying is concerned. I have one example here.

Just a couple of years ago with regard to Johnson Motor Co.-Outboard Marine Co., which was threatened with an Executive order which would have prohibited the use of gasoline in recre-

ational vehicles, including the use in outboard motors. Of course, this could put recreational manufacturing companies such as Johnson Motors out of business. But the mere fact that the management communicated with the employees, and that I heard from all the employees, certainly struck me as being a fully legitimate exercise of full first amendment rights. Their very economic survival was dependent upon what the Federal Government did.

But I just think that's the kind of example which if covered by this legislation, could result, not only in a chilling effect, but a virtual prohibition against an exercise of a constitutional right.

Mr. HOUSER. We couldn't agree with you more, Congressman. This thing gets sometimes confused in the way you treat the subject, grassroots lobbying. Nobody says you can't do it per se but what is happening is the IRS, of course, is saying if you engage in it and the expenses are no longer deductible and the SEC is saying you must report those activities, then if you'll be reporting those activities, that's infringement and that's a key word that's included in the Constitution.

Mr. MCCLORY. Those are special interests but they are legitimate. They should be protected. I have an idea that maybe the chairman concurs in general with my own position.

Mr. DANIELSON. I am one of these inscrutables.

Mr. HOUSER. I wonder, sir, if you would permit me to comment on a statement that you were quoted as making some time ago, in the spirit of give and take.

Mr. DANIELSON. I hear so many of my statements come back to me that I would enjoy this one.

Mr. HOUSER. You were quoted as saying that this bill responds to a perceived danger by only treading on the fingers of the first amendment. We thought about that. Our concern, I think, is it is very difficult to separate the fingers from the hand, from the arm, from the body politic. That's an infringement.

Mr. DANIELSON. Certainly I'm not quarreling with you.

Mr. KINDNESS. I'm going to protect my knuckles. Thank you, Mr. Chairman.

One question that I would like to direct to both of you gentlemen is with respect to the geographic exemption which varies a little bit under the bills under consideration. In looking at the resolution of the board of directors of NAM, it indicates that any communication with Members of Congress representing any or all of an organization's congressional districts and States should not be a reportable event.

In the bill that I introduced, which I don't suggest is perfect by any means, there are two geographic exemptions. One relating to individuals, and another relating to organizations.

If I may take just a moment to read them and ask you your reaction as to whether they tend to meet the principles that are involved in the resolution of the NAM board:

> The term "lobbying communication" does not include "a communication on behalf of an organization with a Senator or Member of the House of Representatives, or to an individual on his personal staff of such Senator or Member, representing the State in which the organization has its principal place of business.

I would indicate to you to begin with that, of course, there are a lot of corporate organizations that have major facilities in numer-

ous States. That would not comply with the "principal place of business" requirement. The legitimacy of contact by people in those business organizations, with the Members representing that particular district in the House and that State in the Senate, should be unquestioned. But we have some difficulty here with the concept of exempting communications beyond the State of principal place of business of a business or corporation.

Do you have any comment in this area?

Mr. HOUSER. Sir, may I begin our response to your question with a question?

When you're talking about a primary place of business, would you have in your own mind the corporate headquarters of an organization, a State where most of its employees function, or where most of its physical plant is? How would you define "primary place of business"?

Mr. KINDNESS. This is one of the problems inherent in drafting a geographic exemption. There are State court decisions that vary somewhat in interpretation of the term "principal place of business." It is in that area that I was seeking to elicit comment that might help us resolution of this.

Mr. LUCAS. Perhaps I can make two comments to clarify our position.

The resolution of the NAM Board of Directors goes significantly even beyond your bill, sir, with regard to the home State exemption. As an example, Mr. Barnes, who is not here, has in his district, Montgomery County, Md., a large plant of the IBM Co.

Under even the broadest presently existing or proposed home State exemption, the manager of that plant could not communicate with Mr. Barnes without that counting as a lobbying communication. We suggest that a plant of such magnitude—there are several thousand employees there; it has a significant economic impact in the community—that a home State exemption should apply under that circumstance.

And so our resolution goes to every place of business rather than only the principal place of business, not because we are looking for a loophole, but because we think it makes sense.

I was hoping Mr. Barnes would be here.

Mr. KINDNESS. The committee report last time referred to this problem by way of saying that the term "principal place of business" is a recognized concept used in other Federal statutes.

The language in the report goes on saying that it's the place where its headquarters are located, where its chief officers and directors conduct business.

Mr. LUCAS. Our resolution is significantly broader than that concept. We are fully aware, however, that in any example of IBM in Mr. Barnes' district, that any employee of IBM, including the manager, could communicate freely under the exemption the employees' personal beliefs, even if those beliefs were initiated or perhaps even coerced by the management.

I don't intend to indicate that we are not aware of the personal exemption presently under the various bills. However, we think that the corporate citizenship of a significant operation should justify a home State exemption as to that representative and we incorporated that provision into our resolution contained.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Kindness.

Mr. Houser, I certainly don't quarrel with you on the statement which you attribute to me, but I think we should emphasize all the words in it.

In the first place, I don't think it is an accurate statement. It's a very colorful phrase and I wish I could claim it but it starts off with, if I'm not mistaken, I recall your saying that it is perceived by some people as treading on fingers. I still feel that having heard witnesses today, that there are witnesses who appeared who perceive a lobby regulation law to be treading on the Constitution.

But the Supreme Court has given me a lot of comfort in that area. We now have a lobbying regulation law which the Supreme Court does not consider to be unconstitutional. There have been a number of decisions of the Supreme Court which hold that you can have a lobbying regulation which is not unconstitutional. And so I think I'll be guided by the Supreme Court rather than the perceptions of some who are not quite so sympathetic to regulation.

I can assure you, Mr. Houser, that I will not be party to drafting any law which I can conceive as violating any part of our Constitution. I flatly will not do that. So you needn't worry along that line.

Mr. HOUSER. Can I respond?

We would like to assure you that we are here in a positive vein. While a significant minority of our board members would have been opposed to any lobbying law reform, the majority point of view was to improve the present law consistent with our concerns.

Mr. DANIELSON. Sir, I know your statement is true. I have been contacted personally by members of your group of people, at least I think they are—your membership list is secret—but I know that we are not in disagreement with this.

In fact, I've had a good deal of support from a number of people in the commercial and industrial world.

To sum up, you are anti the criminal penalty within the bill itself.

Mr. HOUSER. That's right.

Mr. DANIELSON. You are anti the criminal penalty of 18 U.S.C. 1001. You would favor a civil penalty on this as being the exclusive remedy within the bill that we may pass.

And from your point of view, Mr. Lucas, you pointed out what sounded like an administrative burden in recordkeeping and so on. And your concern is to reduce the burdens of recordkeeping.

Mr. LUCAS. That is correct.

Mr. DANIELSON. You were present this morning when Mr. O'Hara testified. Do you recall that he testified that in the firm in which he works they billed their clients on a per-hour basis, the traditional law office practice.

You have some 25 to 30 members of your organization who do engage in lobbying, at least from time to time.

Mr. LUCAS. From time to time, yes.

Mr. DANIELSON. Would it be extremely burdensome for that group of people to keep some kind of a time record? They must in some way justify their keep, anyway, I'm sure.

Mr. LUCAS. Yes, sir. We are not here to dispute that burden. We assign the status of lobbyist organizationally. We have a designated lobbyist, registered lobbyist, if you will, in our divisional offices. We have a registered lobbyist assigned to each board committee——

Mr. DANIELSON. Let me interrupt. You've made your point on that.

What I'm getting at is would you find it burdensome if you simply reported on the basis, as Mr. O'Hara has suggested, you've got your people who are engaged in this kind of work and they must turn in some kind of report to you as to how much time or how many days they have worked in the effort.

Would that be burdensome?

Mr. LUCAS. No, sir, that would not. My concern goes beyond that report.

Mr. DANIELSON. You go to preparation and so forth.

Mr. LUCAS. It's when I know that 25 people have spent $7 in a quarter on lobbying communication.

Now again, we are attempting to interpret the Harriss decision and we are dealing only with direct communications with elected members of Congress, et cetera. And I can communicate with them, and even if you changed the rule and applied it only to them, I can still do it in 5 man-days per a quarter.

My problem goes to reaching behind my lobbyist and going into the organization.

Mr. DANIELSON. I think I have your point and that is if you could stick to those—let me just coin a phrase for the purpose of this discussion only—your professional lobbyist, not clerical help.

Mr. LUCAS. That's correct.

Mr. DANIELSON. If you could stick to that, the burden would not be too oppressive for you.

Mr. LUCAS. Provided I have a meaningful definition of the required expenditures to be reported, total expenditures.

Mr. DANIELSON. All right. I have your point.

Mr. Houser?

Mr. HOUSER. NAM clearly admits to being a lobbying group. I think we have to distinguish because we are registered, between the NAM and its functions and many of our thousands of members who are unlikely to register under the present act or this act that's being proposed.

They are going to have a burden unlike ours in that they are going to have to keep track sort of like a stopwatch as to when they are reaching threshold and so in that area, you can distinguish, I hope, and I know you can, between our concern as an association and their concerns as many small corporations wondering when they are going to reach the threshold so that they have to report.

And there I think the burden can remain very onerous.

Mr. DANIELSON. Your testimony has been very helpful here and I do appreciate it regarding section 1001. The wilful making of a false statement has always been considered more offensive in our law than just negligence or carelessness or even reckless carelessness in doing things.

A good case in point is the Internal Revenue Code. As you know, it is a felony wilfully to file a false income tax return but it's only a misdemeanor if you don't file one at all. The Government has long considered that it is less repugnant to our system to fail to file an income tax return, refuse to, than it is wilfully to file a false one. The falsehoods tends to become compounded so I suppose if you ever got in that dilemma you could fail to file your lobbying return rather than file a false one and you would escape section 1001 and you would be in pretty good shape.

Thank you very much.

[Witnesses excused.]

Mr. DANIELSON. We have one more witness, Mr. John Archer, who is an assistant director of legislative affairs for the American Automobile Association.

You are accompanied by someone.

TESTIMONY OF JOHN ARCHER, ASSISTANT DIRECTOR, LEGISLATIVE AFFAIRS DEPARTMENT, AMERICAN AUTOMOBILE ASSOCIATION, ACCOMPANIED BY JERRY C. CONNERS, MANAGING DIRECTOR OF GOVERNMENT AFFAIRS

Mr. ARCHER. I would like to submit our full statement for the record. I would like to make a point, and then go on to our chief interest.

[The full statement follows:]

STATEMENT OF JOHN ARCHER, ASSISTANT DIRECTOR, LEGISLATIVE AFFAIRS DEPARTMENT, AMERICAN AUTOMOBILE ASSOCIATION ON PUBLIC DISCLOSURE OF LOBBYING ACT OF 1979

SUMMARY

The American Automobile Association appreciates the opportunity to present its views regarding government regulation of lobbying. AAA believes that the public business should be conducted openly and therefore recognizes the need to revise the largely unenforceable Lobbying Registration Act of 1946, particularly its threshold requirements. The Association endorses the "days" test incorporated into H.R. 81 as a precise, meaningful threshold whose simplicity would aid compliance and enforcement.

Lobbying reform legislation must address two valid but possibly conflicting goals: the desire to disclose lobbying activities so that public cynicism toward our political process can be reduced; and the need to avoid a chilling effect on the exercise of our constitutionally protected right to petition the government for redress of grievances. In our view, lobbying regulation could largely satisfy these demanding objectives if reasonable reporting and registration requirements are enacted, indirect lobbying (solicitation of grassroots communications) is exempted, and the coverage of the so-called home state exemption is extended to communications with any member of a citizen's home state Congressional delegation.

An unlimited home state exemption is important to AAA because the Association is afraid that without its adoption, the burdens connected with required recordkeeping, registration and reporting requirements will deter branch offices of AAA clubs from contacting their local Congressman. Adoption of the home state exemption incorporated into H.R. 2302, introduced by Congressman Kindness, would remedy this potentially chilling effect.

Good Morning, Mr. Chairman. My name is John Archer. I am Assistant Director of Legislative Affairs for the American Automobile Association. With me this morning is Jerry C. Connors, Managing Director of Government Affairs.

AAA is the oldest and largest consumer/service organization in the world, now serving over 20 million members with 962 clubs and branch offices. Our legislative and public service activities are specifically mandated by our by-laws. The legitimacy of this activity is buttressed further by national surveys indicating that the AAA's participation in the governmental process is one of the leading reasons why citizens join AAA.

AAA believes that public business should be conducted openly and therefore recognizes the need to revise the largely unenforceable Lobbying Registration Act of 1946. At the same time we are concerned that a number of lobbying reform proposals have threatened the constitutionally-protected right to petition our elected representatives for a redress of grievances. Therefore, we urge the subcommittee to use great care in balancing the public's need to be informed about lobbying efforts against the potential abridgement of their constitutional rights of free speech.

AAA believes that a realistic and enforceable lobbying reform bill would end the charges of illegal lobbying activities, which are often cited by critics of the present law. In our view, those examples fail to document the popular assumption that lobbying is a shady activity, indulged in by secretly-funded, nefarious groups bent on working their will behind closed doors. Rather, they merely emphasize the weaknesses of the present law.

AAA believes that the lobbying threshold test contained in H.R. 81 is a good one. This test would require the registration of an organization employing one individual who spends all or part of each of thirteen days or more in any quarterly filing period, or two or more indivduals who spend all or part of each of seven days or more in any quarterly filing period, to make lobbying communications. Unlike the vague "principal purpose" test of the current law, the "days" test is a meaningful, precise threshold whose simplicity would aid compliance and enforcement.

We are also pleased that H.R. 81 exempts indirect lobbying campaigns intended to induce citizen pressure on Congress. It should also insure that the grassroots communication that are induced by such a campaign are also exempted. Unfortunately, the geographical exemption now contained in H.R. 81 is limited to communications to Congressmen representing the city or county where the lobbying organization's principal place of business is located.

We think this is insufficient and believe an example concerning the Auto. Club of Southern California, an AAA affiliate, demonstrates our point. Its headquarters is located in Los Angeles, but it has over 70 branch offices located throughout Southern California. As a service organization, this auto club attempts to provide prompt, efficient service to its members, as well as a responsive ear to their complaints and suggestions, including their views on legislation.

Yet if the manager of the Auto. Club of Southern California branch office in San Diego contacts Congressman Robert Wilson (one of the Representatives from San Diego) his communication constitutes a lobbying contact within the meaning of H.R. 81. We contend that this is an unfair frustration of the intent of the home state exemption.

For all intents and purposes, and in the view of the local member, the San Diego office is the auto club for the San Diego area, charged with representing the interests of the San Diego motorist. But under H.R. 81, if the San Diego branch office consistently attempts to represent the views of its members to its local congressional representative, it must register as a lobbying organization.

Regrettably, if this situation is allowed to occur, we have little doubt of its ultimate impact. The San Diego office of the Auto. Club of Southern California will simply stop contacting its Congressman and instead fulfill its public service mandate by participation in local affairs. AAA club branch offices all over the country would be similarly affected.

We believe this chilling effect is as incongruous as it is disturbing. H.R. 81 already exempts communications by professional lobbyists intended to induce grassroots political participation. Why not also insure that the grassroots responses solicited by that indirect lobbying are also exempted from coverage? This objection could be assured by adoption of the unlimited home state exemption incorporated into H.R. 2302, introduced by Congressman Thomas Kindness (R-Ohio).

If this change is not made, involvement of the average citizen will be reduced, thereby enhancing the political clout of groups more willing to comply with registration and reporting requirements. We suspect these latter organizations will be comprised primarily of heavily-financed organizations lobbying for financial benefit, or single issue zealots. Unfortunately, these two sections of the electorate are probably already overrepresented in Congress.

AAA has one further technical suggestion regarding the geographical exemption contained in H.R. 81. It now applies to "communications on any subject (to home state Congressmen) directly affecting an organization." In this context the meaning of the words "directly affecting an organization" is unclear. That's a serious deficiency since on any given issue reasonable men could differ as to whether or not an organization was "directly affected." This point is particularly valid for AAA clubs which lobby not for direct financial gain, but rather because their charters mandate participation in the process on behalf of their motorist members.

An example will illustrate this point. The American Automobile Association believes that this bill may jeopardize the right of our member clubs to contact their Congressmen unless an unqualified, clear-cut home state exemption is included. That's why I am testifying today.

However, some might question the Association's interest in the content of lobbying reform legislation. It might be argued that AAA is "directly affected" only by motorist and travel legislation.

Obviously the point I'm making is that the coverage of the home state exemption should not depend on someone's subjective interpretation of the words "directly affecting an organization." They serve no compelling governmental interest since no group would lobby on matters in which it did not believe it had an interest. But the existence of this language would constitute an obstacle to a citizen's right to petition his government because organizations such as AAA clubs would decline to contact their Congressmen regarding bills affecting them or their members if there was even a remote chance that a government official might not agree with their interpretation of the words "directly affecting an organization."

This concludes my remarks. On behalf of the Association and myself I would like to thank the subcommittee for the opportunity to testify. I will be happy to respond to any questions you might have.

Mr. ARCHER. The first witness mentioned the ease of compliance, and that's true with a professional lobbyist, but most lobbying is not done by professional lobbyists. For all the clubs that we have we have perhaps three lobbyists. The rest of the lobbying is done typically by the manager.

The burden of recordkeeping would be quite onerous. They will stop communicating with their Congressmen. AAA does not lobby for financial gain; we lobby because the bylaws say we should lobby on behalf of motorists, so when a manager of an office calls a man, he's doing that because he is representing his motorists. And there is no strong, compelling reason for him to do that other than the bylaws. He's not being paid, for instance, and we are very afraid what would happen if you would put an onerous recordkeeping burden on that individual.

He'll start to fulfill the mandate by active participation in local affairs, which he does anyway, and just forget about contacting his Congressman. I think that's a real problem. I think it could have a real chilling effect and I would point out that the professional lobbyist, Mr. O'Hara or anyone else, me and Jerry included, will always participate. We are being paid to do it.

So regardless of what the recordkeeping burdens might be, we'll continue to be in the process. But your average manager of a AAA club will drop out, and I think that's a real problem.

Mr. DANIELSON. May I interrupt you there to ask a question while it is in point.

Does the local manager of the AAA office, does he make these communications under the direction of the higher level AAA or does he do it on his own?

Mr. ARCHER. AAA is a federation. It's a federation of clubs that are independent. So I can't speak with great knowledge.

We try to encourage them, yes, sir. Whether they choose to respond and how they respond is strictly their decision.

Mr. DANIELSON. Is that his decision whether he responds at all, and how?

Mr. ARCHER. In many instances, it would be, because he's the boss. In many other instances, it would not be.

Mr. DANIELSON. Would he then be working as a part of an organization or is he making his own communication? It seems to me like he's making his own communication.

Mr. ARCHER. It's true the bill has a communication element if he chooses to communicate on behalf of himself. The communications I was speaking of is when someone contacts a Congressman on behalf of their club and presumably on behalf of the interest of the membership of that club, typically by telegram or by letter.

The other thing I wanted to bring up is the home State exemption. As you know, the geographical exemption now contained in H.R. 81 is limited to communications to Congressmen representing the city or county where the lobbying organization's principal place of business is located.

We think this is insufficient and believe an example, noted in our submitted testimony, beginning in the middle of page 2, concerning the Auto Club of Southern California, an AAA affiliate, demonstrates our point.

That auto club's headquarters is located in Los Angeles, but it has over 70 branch offices located throughout southern California. As a service organization, it attempts to provide prompt, efficient service to its members, as well as a responsive ear to their complaints and suggestions, including their views on legislation.

Yet if the manager of the Auto Club of Southern California branch office in San Diego contacts Congressman Robert Wilson, one of the Representatives from San Diego, his communication constitutes a lobbying contact within the meaning of H.R. 81. We contend that this is an unfair frustration of the intent of the home State exemption.

For all practical purposes, and in the view of the local member, the San Diego office is the Auto Club for the San Diego area, charged with representing the interests of the San Diego motorist. But under H.R. 81, if the San Diego branch office consistently attempts to represent the views of its members to its local congressional representative, it must register as a lobbying organization.

Regrettably, if this situation is allowed to occur, we have little doubt of its ultimate impact. The San Diego office of the Auto Club of Southern California will simply stop contacting its Congressman and instead fulfill its public service mandate by participation in local affairs. AAA club branch offices all over the country would be similarly affected.

We believe this chilling effect is as incongruous as it is disturbing. H.R. 81 already exempts communications by professional lobbyists intended to induce grassroots political participation. Why not also insure that the grassroots responses solicited by that indirect lobbying are also exempted from coverage?

This objection could be assured by adoption of the unlimited home State exemption incorporated into H.R. 2302, introduced by your subcommittee colleague, Congressman Kindness.

AAA has one further technical suggestion regarding the geographical exemption contained in H.R. 81. It now applies only to communications on issues "directly affecting an organization."

AAA believe that the word "directly affecting an organization" should be deleted because in the context in which they are used, their meaning is unclear. That's a serious deficiency, which would be especially troublesome to AAA, which lobbies not for financial gain, but rather because its bylaws mandate participation in the process on behalf of its motorist members.

An example will illustrate this point. The American Automobile Association believes that this bill may jeopardize the right of our member clubs to contact their Congressmen unless an unqualified, clear-cut home State exemption is included.

However, some might question the association's interest in the content of lobbying reform legislation. It might be argued that AAA is "directly affected" only by motorist and travel legislation. And indeed, a few might even argue that AAA is not directly affected by these issues, given its lack of direct financial stake in their outcome.

Obviously the point I'm making is that the coverage of the home State exemption should not depend on someone's subjective interpretation of the words "directly affecting an organization." They serve no compelling governmental interest; but the existence of this language would constitue an obstacle to a citizen's right to petition his government because organizations such as AAA clubs would decline to contact their Congressmen regarding bills affecting them or their members if there was even a remote chance that a Government official might not agree with their interpretation of the words "directly affecting an organization."

This concludes my remarks. On behalf of the association and myself I would like to thank the subcommittee for the opportunity to testify.

I will be happy to respond to any questions you might have.

Mr. DANIELSON. I appreciate your point of view that you have given. We worked hard at it at the last Congress, to work out home State exemption in a way that would work equity wherever possible. It's a very difficult thing to do.

I'm not thoroughly familiar with the structure of your automobile club throughout the country, but it was always my understanding, probably wrong, that these were not a monolithic structure of any kind but that they were a conglomeration of local groups which utilized the same symbol and provide similar service and try to improve their service by an exchange of information on road conditions, on mapping, and the like.

Is there a structure from top to bottom in which somebody, president or somebody, can cause the local branches to perform in a specific manner?

Mr. ARCHER. No, sir. Your general assumption is correct. They determine policy chiefly through meetings that are held once a year. At that point we establish a policy, whatever they might be.

Then most AAA clubs will tend to uphold that policy and fight for it, push for it.

Mr. DANIELSON. They are not required to do so?

Mr. ARCHER. They are not required. Our function would be chiefly—besides direct lobbying communications would be to communicate to the clubs when we think that an issue has arisen in Washington that affects their policy. And there is a definite implication, if not expressly stated, that we would like to have this contact with their Congressman.

But whether they do or what they say is their business because they are answerable to their own club. They are independent entities. We have no control over what they do or say.

Mr. DANIELSON. I have no additional questions.

Thank you, gentlemen, both of you for your help. We have a difficult job a couple of weeks down the road of trying again to patch together a bill to meet what I consider to be a legitimate need, though without treading on the Constitution, its fingers or toes or anything else, in doing so.

Your testimony, your suggestions, the things we expect to receive in the way of proposed language, all will be of help.

We thank you very much.

I'm about to adjourn today's meeting. It is two minutes to 12. I would like to announce that the next meeting of this subcommittee will be tomorrow morning, March 22, 1979, at 10 o'clock in room 2141.

[Whereupon, at 11:59 a.m., the hearing of the subcommittee was recessed to reconvene at 10 a.m. the following day, March 22, 1979, in room 2141.]

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

THURSDAY, MARCH 22, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 2141 of the Rayburn House Office Building; Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Hughes, Harris, Moorhead, and McClory.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., and Janet Potts, assistant counsel; Alan F. Coffey, associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 10 o'clock having arrived, the subcommittee will come to order and we will continue with our hearings on bill H.R. 81 and related bills, all of which have something to do with the subject of public disclosure of lobbying.

Our first witness this morning will be the Honorable Edmund L. Henshaw, Jr., Clerk of the House of Representatives.

Won't you come forward, Mr. Henshaw? As a prefix I might state that under the existing lobbying law the Clerk of the House is the supervising officer in the House of Representatives. It is important to us to have his opinions in connection with the subject.

Mr. Henshaw, without objection we will receive your statement in the record. You are free, Mr. Henshaw, to proceed.

[The complete statement follows:]

SYNOPSIS OF MARCH 22, 1979, STATEMENT OF EDMUND L. HENSHAW, JR., CLERK OF THE U.S. HOUSE OF REPRESENTATIVES

I, Edmund L. Henshaw, Jr., as Clerk of the U.S. House of Representatives and supervisory House Officer under the Federal Regulation of Lobbying Act, am charged with the administration of certain aspects of the law.

In testimony today, I am addressing this office's responsibilities under the present Act; that is, the receipt and processing of reports and statements, the registration of individuals and organizations, providing public access to documents filed and the compilation and printing of documents filed in the Congressional Record.

More importantly, however, are my statements as to the recent progress of my office in the administration of the present Act and our ability to efficiently and effectively administer a new lobby disclosure law.

Specifically mentioned are the advances in the area of computerization, which give the office capabilities beyond those envisioned in the legislation being discussed.

Finally, in light of the experience gained and ability and willingness of this office to continue to function as "point of entry", transfer agent and provider of public access to information filed, I request that the Subcommittee consider developing the administrative duties associated with the proposed lobby law upon the Clerk.

Thank you.

TESTIMONY OF EDMUND L. HENSHAW, JR., CLERK, HOUSE OF REPRESENTATIVES OF THE UNITED STATES

Mr. HENSHAW. If it will be all right with the chairman, I would like to read my statement, which is very short, and insert additional material that will go into the record.

Before I do that, I would like to introduce some of the people with me here. On my left is Steve Ross, assistant counsel.

Mr. DANIELSON. What is his function, please?

Mr. HENSHAW. He is assistant counsel.

Mr. DANIELSON. Does he have anything to do with the lobbying law?

Mr. HENSHAW. Yes, sir. He is supervisory officer directly responsible for it.

To my right is Mr. Stan Grand, and to my far right is Mr. Steve Duffy, who is the Chief of the Office of Records and Registration, where these reports are deposited and kept and reviewed.

If I may, I'll read my statement.

Mr. DANIELSON. Proceed, sir.

Mr. HENSHAW. I am Clerk of the House of Representatives and I thank you for this opportunity to address the legislative changes to the current lobbying Act being considered by the committee in H.R. 81 and related bills.

As supervisory House officer under the Federal Regulation of Lobbying Act, my office is charged, with certain aspects of the administration of the present law.

Specifically, every person receiving contributions or expending any money for purposes defined under the act as lobbying activity must register and file reports on a quarterly basis with the Clerk of the House. Every person required to file such reports must first register with both the Clerk and the Secretary of the Senate. Furthermore, the Clerk is required to notify registrants immediately of their failure to file a report, make any report or statement filed with him available for public inspection and, in cooperation with the Secretary of the Senate, compile and print reports filed in the Congressional Record.

Over the years, certain deficiencies in the existing statute have been noted by both your committees and outside groups. In some cases criticism has been directed at the Clerk for failure to actively and consistently administer the act.

However, during the last few years, a great many changes have occurred with respect to our administration of that law. Procedures have been developed by the Office of Records and Registration that allow the Clerk to carry out his responsibilities under the Lobbying Act in a stronger, more effective, and more orderly manner.

For your information, the Office of Records and Registration is responsible for performing administrative and public disclosure functions under the Federal Regulation of Lobbying Act, the Federal Election Campaign Act, the new Ethics in Government Act, the former financial disclosure rule of the House—rule 44, and the International Security Assistance Act of 1978 (requiring the filing of reports on official foreign travel by Members, staff, and committees). This office also provides public access to the monthly payroll authorizations and certifications of all House employees. The re-

ports and statements filed in connection with these statues and rules numbered a staggering 53,000 in 1978.

With respect to the Federal Regulation of Lobbying Act, every administrative function has undergone updating. For example, an earlier practice of telephonic notification to filers of inadequate reporting has been replaced with formal written notification. The initial results of this program are very encouraging. The percentage of filings deemed to be inadequate has been reduced from over 40 percent to under 10 percent.

An interim computer program has been employed for the first time in 1979 to notify registrants of their upcoming filing requirement, as well as to dun individuals for their failure to subsequently file. In fact, for the fourth quarter 1978 lobby report of receipts and expenditures, due January 10, 1979, 2,225 duns were sent to registrants who failed to file.

In order to accurately implement this dunning notification—a postcard notification form was developed during 1978. This form was distributed to our 5,000 plus registrants with extremely positive results. The postcard is submitted when the registrant has neither incurred reportable receipts/expenditures nor engaged in lobbying activity during the particular quarter to which the filing pertains. The report accompanying last year's legislation refers to the institution of a means of notification where no regulated activity for a given period by registrants has occurred.

A more complex online computer program is currently being designed for use in 1979 which will: Compute total lobbying receipts and expenditures for each registrant by calendar quarter, year and lifetime; cross-reference these figures by a registrant's legislative interests and/or type (that is, law firm, corporation, consulting firm, individual, et cetera); automatically receipt reports filed and dun those registrants who fail to file; simultaneously list reports filed, their microfilm location, and the date received; cross-reference registrants with employers and/or clients; produce, on demand, mailing labels and complete address information; and deliver various other internal programs. In connection with its ongoing study of administrative requirements necessary to properly implement any new lobbying act, the committee may want to consider the system that this office has designed, by way of a prototype.

The foregoing efforts represent a recognition of the Clerk's responsiblity to discharge his duties under the current law, within its limits, in an efficient and consistent manner.

If the purpose of H.R. 81 and related bills is to foster disclosure public availability of information on lobbying activities of registrants, I feel it will further these purposes to have an existing facility which is both intimately familiar with prior law, and which can use that experience to insure that disclosures to the public is meaningful, and which can be provided in a timely manner.

The Clerk and the Office of Records and Registration are not only knowledgeable in dealing with the public, but also have gained considerable ability in assisting prospective registrants understand their substantive responsiblities under the act and as noted above, administering the act in a more effective manner.

As the Clerk of the U.S. House of Representatives, and as administrative officer under the Federal Regulation of Lobbying Act, I stand ready to give whatever assistance, expertise and insights which I, or my staff, might be able to offer to move toward the development of a new lobby disclosure bill.

Moreover, in view of the Comptroller General's reluctance to administer a new lobby disclosure law without compliance authority, according to his statement to the subcommittee on March 9, 1979, and the current capability of the Clerk's office, to act as "point of entry," transfer agent, and to provide public inspection and copying of filings, your subcommittee may want to consider developing the administrative and ministerial functions assoicated with the proposed lobby law changes upon the Clerk.

Thank you, Mr. Chairman.

Mr. DANIELSON. Why don't you go through the additional portion of your statement.

Mr. HENSHAW. I will be glad to. Thank you. This is mainly dealing with what the Office of Records and Registration has done with statistics, with some of the other filings we have made.

Mr. DANIELSON. Inasmuch as we are one-half of the way, we might as well go the other half.

Mr. HENSHAW. The ability and willingness of this office to perform the administrative and ministerial functions incident to a new lobby disclosure law is the primary thrust of my testimony. In order that the subcommittee be completely familiar with the scope of this office's involvement not only with the Federal Regulation of Lobbying Act but also all the various statutes and rules mentioned in my opening statement, I would like to include these supplemental comments as part of the record, for your information and convenience.

The Clerk's Office of Records and Registration, as previously noted, is responsible for carrying out certain ministerial duties under the Federal Regulation of Lobbying Act, the Federal Election Campaign Act, the new Ethics in Government Act, the former financial disclosure rule of the House—rule 44, and the International Security Assistance Act of 1978.

Under the Federal Election Campaign Act all reports and statements required of candidates for the U.S. House of Representatives and their supporting committees are filed with the Clerk as "point of entry" and are microfilmed, put into our computer program, made available for public inspection within 48 hours, and transmitted to the Federal Election Commission in the form of photocopy and microfilm. During the past year 36,000 campaign documents were filed with the Office of Records and Registration. These reports are preliminarily reviewed and informational notices sent when surface omissions and errors are detected. This process resulted in nearly 6,000 notifications being sent to candidates and committees.

In addition to this review of statements filed, the office also sends reminders of reporting dates to candidates and committees (which in the last election year 1978, numbered approximately 19,000) and notifies filers who fail to file a required report. These informational notices were usually sent within 10 days of the due

date of the report. More than 3,200 such notices were sent for the calendar year 1978.

RULE 44 AND ETHICS IN GOVERNMENT ACT

Certain responsibilities were delegated to the Clerk of the House pursuant to House rule 44 in the early part of 1978:

(1) Point of entry for the financial disclosure statements filed by Members of Congress, officers, principal assistants to Members, and professional staff members of House committees;

(2) Development of forms for the information required to be filed;

(3) Providing copies of all reports on a same-day basis to the Committee on Standards of Official Conduct, and in the case of Members' reports, forwarding copies to the secretaries of state represented by the Members; and

(4) Compiling and having printed as a House document all reports filed by Members within the period beginning January 1, and ending on April 30, 1978.

This office was assigned the task of carrying out these responsibilities. Procedures were implemented for handling the receipt, forwarding of copies, and printing of the filings as required by the House rule. Total filings exceeded 2,800 in 1978 which resulted in virtually 100 percent compliance.

House rule 44 was superseded by the Ethics in Government Act of 1978 (Public Law 95-521, signed into law on October 26, 1978). With the passage of this law, the Office of Records and Registration was given the responsiblity for discharging the increased duties of the Clerk according to the provisions of the new law.

The office became the point of entry of financial disclosure statements filed by candidates to the House of Representatives, in addition to filings by Members, officers, and certain employees of the legislative branch. Severe time constraints and little advanced notice (the law was signed October 26 and the first reports of candidates were due November 1) required planning, reorganization, and personnel adjustments to meet the deadlines imposed by the law. New candidate identification, computer, and processing systems were devised to properly administer the law. Guidelines were developed to clarify the filing obligations of those required to file and new forms were developed. Although the 1978 filing was exempted from the civil sanctions imposed by the act the office received 430 statements as of December 31. Each of these was processed, microfilmed, indexed, filed, and receipted. Copies were then transmitted to the appropriate Secretary of State and the Committee on Standards of Official Conduct within 7 days of receipt.

The Office of Records and Registration also initially reviews reports filed by House committees and other groups with respect to travel outside the United States which are filed pursuant to the International Security Assistance Act of 1978, and prepares an index for retrieval by the public, and prints the compilations of these reports in the Congressional Record.

In addition, the Clerk's Office of Records and Registration is charged with receipt, storage, and, if necessary, the appraisal of tangible gifts or decorations given to Members by a foreign government pursuant to the provisions of the Foreign Gifts and Decora-

tions Act. Forms which give details as to the nature of the gift, from which government it was received, and its value have been developed for transmittal to the Committee on Standards of Official Conduct; the committee has the responsiblity of disclosing information contained on those forms to the public.

This concludes my statement, Mr. Chariman.

Mr. DANIELSON. Thank you, Mr. Henshaw. I would yield first to the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Over the past several years we have heard our lobby disclosure laws spoken of with nothing but ridicule and as being worthless and in some cases being worse than useless. You have been administering the 1946 law and I would like to hear your comments about the criticism that has centered on the existing law and your administration of it.

Mr. HENSHAW. Mr. Moorhead, to answer your questions as best I can, of course we are the administrative office. We take care of those filings. In my judgment some of these criticisms have been leveled to people who don't file. I don't think that I am in a position to really give an answer from the office of the Clerk of the House. My opinion is that this H.R. 81 goes a long ways to correcting that in the manner that it does set a baseline. You do have in each quarter, I think the figure is 2,500, an activity, a lobbying activity where somebody is required to file. We have taken the step of where people are little confused as to who files and when to file so we went the postcard route for these people who were not active in a quarter so they could file, stay current, and we could have a record that they were still active in the business but not that quarter. But some of these people who didn't know, and I guess this goes back to an act, I would have to defer a little bit, that the Supreme Court's decision on the Harris Act where it was ruled ed and I paraphrase this, that if it was not your prime purpose, then you were not required to file a lobby report and I think the bill goes a long ways to correcting that.

To get into the details of the Harris case, I would have to defer——

Mr. MOORHEAD. I was referring more to the existing law than I was to the proposed bills. Among other things, I would refer to the GAO report issued in 1975. It says, for example, that a review of the quarterly reports filed during for the first quarter of 1974, GAO found that 38 percent were incomplete and 61 percent were received late.

What do you do when you receive incomplete reports? What do you do about late reports that are filed with you? Is there any way of enforcing the law at the present time?

Mr. HENSHAW. As I mentioned in my statements, we do contact them. We used to contact those late filers by telephone. We go back to them three times. I know we go back to them by letter but how many times we go back beyond that—let me let Steve Duffy answer.

Mr. DUFFY. We do contact the indivduals when we notice the surface violations. I have to defer to the counsel because we don't have authority under the statutes to enforce the act. We do contact individuals and let them know that there is a violation or an

omission, but in terms of what powers we have beyond that, there aren't any that are outlined in the statutes.

Mr. MOORHEAD. What I am trying to get at—I'm not trying to be critical. What I'm trying to get at is, how much lobbying activity is not being reported at the present time? You have dealt with this problem. You have seen what goes on here. You know the area pretty well, I am certain. What is the need? Do you think that there is a lot going totally unreported at the present time? Is there the need for a new law? What do we have to do to solve the problem?

Mr. HENSHAW. I think, once again, I will have to defer to my counsel and maybe he can review a little bit of the Harris case that was decided by the Supreme Court which we have time and time again people come into us and say that this is not our full activity. We do not have to file a lobby report. We advise them that we think it is their position to file a lobby report but we have no enforcement power of any kind.

Mr. MOORHEAD. If you received the administrative responsibility under a new law, what do you need in terms of additional manpower and staff in order to see that the law is carried out?

Mr. HENSHAW. We have discussed this, not at extreme length, but looking at H.R. 81, our shop is not that big. Our entire shop over there is about 24 people and records and registration. We have got approximately five or six people who handle the lobby reports. That's the whole process—the mailings, putting it into the record, and everything else—and I think that if we have the teeth and the guidance and the directions with the definition of who should file as in H.R. 81, we might need one, mayby two extra people, but we won't need any to move our whole operation in any concern. We do have the computer that we will leaning on very heavily and I think that I would make a judgment of one or two people.

Mr. MOORHEAD. Have you done any cost estimates on this thing.

Mr. HENSHAW. Not yet.

Mr. MOORHEAD. You don't have an estimate of what additional money you'll need?

Mr. HENSHAW. No. As I say, our shop is set up right now depending on what the increase is, we will need one or two additional people.

Mr. MOORHEAD. I am trying to hurry this because I know my 5 minutes are going to be up. What kind of investigative powers do you need to effectively administer the new law?

Mr. HENSHAW. I think under the law as proposed in H.R. 81 that goes to the Department of Justice. I think we will have—my counsel advises that we will need some rulemaking authority as to when to refer these.

Mr. MOORHEAD. There has been subpena talk and talk about a number of other enforcement powers. I am not asking you about the prosecutions. I am asking you if you are the agency that is carrying this out, what you specifically would need to carry it out effectively or are you satisfied that you already have enough authority?

Mr. HENSHAW. I think, once again, deferring to counsel, we would have to have some guidance so we could set up guidelines for referrals to Justice.

Mr. BRAND. Mr. Moorhead, I think what we would need simply are very modest powers to write rules as to filing, point-of-entry items. The committee in the Ethics in Government Act devolved the filing responsibility upon the Clerk and simply gave him rule-making authority for the purpose of developing the forms and stating where it should be filed, in what form, and how. Those are very ministerial acts, though. There would not have to be any large amount of rulemaking authority provided to the Clerk. It would be needed only for purposes of establishing a flow of information to the Clerk and then from the Clerk to the Attorney General.

Mr. MOORHEAD. Thank you. We appreciate your coming over and testifying.

Mr. DANIELSON. Mr. Hughes.

Mr. HUGHES. Thank you, Mr. Chairman. As I understand it, your present computer capability would enable you to pick up the responsibilities for lobby disclosure without too much of a committment of additional resources. Is that correct?

Mr. HENDERSON. That is not implemented yet but we do have it on schedule. In 3 months we should have it implemented.

Mr. HUGHES. So it would require two or three staff members and obviously some other resources to develop a system and for programing the computer. The computer capability is in existence, is it not?

Mr. HENSHAW. Yes.

Mr. HUGHES. I don't have any more questins or comment Mr. Chairman, because I think the Clerk has really given us an excellent insight into the operations of his office. The Clerk has administered the Federal Lobby Act very well. The only criticism I have heard has been directed to the interpretation of the law. I want to particularly commend the Clerk for the administration of the Ethics in Government Act. This act was signed in late October of 1978. The Clerk's office implemented that and did the programing and provided for the point of entry among other things and did an excellent job in attempting to have that act in place for the November 1978 election. I want to commend the Clerk's office. I think the Clerk made a compelling case for receiving this particular responsibility. Thank you, Mr. Chariman.

Mr. HENSHAW. Thank you, sir.

Mr. DANIELSON. Mr. Harris of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman. It is a pleasure to be able to question the Clerk. His responsibility has been very important. I think he can give us some good insight on the need for a new law.

Mr. Henshaw, can you give me an estimate of the number of filings you have this year with respect to the lobby registration?

Mr. HENSHAW. I could break it down on a quarterly basis. We have 18,000 filings last year so I guess we are looking at about 5,000 filings in a quarter.

Mr. HARRIS. Translate that into number of registrants. How many do you have?

Mr. DUFFY. About 4,400, people and organizations. Some, for instance, law firms have more than one client but that is a total number of clients, in essence would be 4,400.

Mr. HARRIS. So in this case 4,400 could count one of the main lobbying law firms maybe 12 times, maybe 20 times?

Mr. DUFFY. Right. From 60, a couple about 60 times. A couple of law firms have quite a few clients.

Mr. HARRIS. If, in fact, one wants to review those filings, what is the procedure that is use to review those filings?

Mr. DUFFY. The individual would come into our office and request, either by indivdual name or organization, what they are interesting in viewing, the particular report for whatever quarter it was that they wished to see. They would indicate to us the report, the individual would get a copy of the microfilm cartridge as to where that report was located, and we have sort of sophisticated equipment in our office where they would put the microfilm in and it comes up on the screen and they can make copies right from the equipment. That's basically the procedure.

Mr. HARRIS. I know with the disclosure filing requirement the record is kept and notification is made with regard to disclosure. You don't do that with regard to lobbying disclosure, do you?

Mr. BRAND. As a matter of law we do not feel that we have the authority to require someone coming in—I believe there is a chilling effect on someone coming in and having to disclose who they are for purposes of reviewing what is supposedly a public filing.

Mr. HARRIS. Do you have experience of anyone coming into the office and asking you if they should file? Do you have any of those inquiries?

Mr. HENSHAW. I don't know how many.

Mr. BRAND. I get many calls from people making what I call status inquiries and, of course, we have no authority to issue advisory opinions or determine to whom the act applies. We try to give them guidance based on the case law and the statute.

Mr. HARRIS. Are you able to give me a number to indicate how many lobbyists have filed?

Mr. DUFFY. Well, for the last quarter as mentioned in the statement, we sent out notices to individuals. I think it was numbered 2,200 reports haven't been filed.

Mr. HARRIS. 2,200 what?

Mr. DUFFY. Reports had not been filed.

Mr. BRAND. That is people who are currently registered as active, but who had not reported in the last quarter. Many of those people have not in fact engaged in any lobbying activity but in a sense had let their registrations lapse.

Mr. DUFFY. It is also the first time we sent out any unmasked notifications and what it did was clear a lot of the very old registrants out. We got letters from individuals saying that they hadn't been involved in lobbying activity for 10 years.

Mr. HARRIS. For the purpose of the record, do you know how many lobbyists have filed, for example, the first quarter of 1979?

Mr. DUFFY. They haven't filed yet. It would be in April. We could determine that after the filing deadline, April 10.

Mr. HARRIS. How many lobbyists registered in the last quarter?

Mr. DUFFY. Registered in the last quarter, they register about an average of 100 a month, 100 lobbyists a month register.

Mr. HARRIS. You are saying 900 a quarter?

Mr. DUFFY. So far about 300 people have registered if the figures are the same, but from what my office tells me about 100 people register a month.

Mr. HARRIS. How many active lobbyists do you have registered in your office today?

Mr. DUFFY. 4,400 active registered lobbyists in the office.

Mr. HARRIS. As I understood the 4,400 figure was the number of registrations, not the number of lobbyists.

Mr. DUFFY. I couldn't tell you offhand how many actual—this is one person for one client. I can't tell you exactly how many individual people.

Mr. HARRIS. This is the figure that I was suggesting you develop for the record for me. I want this developed for the record how many lobbyists are registered with the Clerk's office in the House of Representatives.

Mr. DUFFY. I don't know the exact figure but I can get it for you.

Mr. HENSHAW. We can supply that figure for the record.

Mr. HARRIS. Have you had any complaints from different parties that so-and-so should be registered but they are not registered? Do you ever get those kind of complaints?

Mr. BRAND. In the context of these status quos we would have a trade association call up and ask about their own status and after it is determined that they are, in fact, properly registered they will say something to the effect, Well, so-and-so in this organization is doing the same thing as I am. I see him up here all the time and he is not registered.

Under this existing statute there is not much that we can do about that other than to advise people who call that our reading of the statute indicates that they should register.

Mr. HARRIS. But it ends there as far as your function is concerned.

Mr. BRAND. Pretty much, yes. We have contemplated at our harrow, I think, doing something more about that and the question, quite frankly, is do we have any authority to go beyond that.

Mr. HARRIS. So are far as the complaints are concerned there is no mechanism where a next step really is taken to see information has been received by this office that indicates that you are, in effect, covered by the Lobby Registration Act and you should file?

Mr. BRAND. There is some sense that there might be an implied right of action on behalf of a citizen to sue an entity is supposed to be registered which is not, but that is obviously a very attenuated——

Mr. HARRIS. To your knowledge has it ever happened?

Mr. BRAND. I believe it may be but only in very isolated instances. I can go back and look for those.

Mr. HARRIS. Counselor, again for the purpose of the record, has there been any enforcement, that is criminal or civil actions, against a party for failing to register or registering improperly?

Mr. BRAND. The Harris case is the last instance, I believe, in which the Department attempted to bring suit against——

Mr. HARRIS. What year was that?

Mr. BRAND. 1954.

Mr. HARRIS. Did any suits precede the Harris case?

Mr. BRAND. I believe there was one, the Slaughter case.

Mr. HARRIS. In 19——

Mr. BRAND. 1951, 1952.

Mr. HARRIS. It is going to have to be 1949 or 1950 because Truman was in office. Slaughter was his Congressman.

Mr. BRAND. There was a subsequent suit by Mayor Bradley seeking a declaratory judgment as to the application of the act to the public officials acting in their official capacity. That suit is going the other way, obviously, from the registrant to the Government.

Mr. HARRIS. Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Harris. Mr. McClory of Illinois.

Mr. MCCLORY. First of all, I want to commend the Clerk of the House, Mr. Henshaw, for the very efficient manner in which he operates his office. The recordkeeping that he undertakes with skill, diligence and accuracy, demonstrates the administrative abilities of the Clerk of the House. Are you asking that we transfer the lobbying responsibility, or put that responsibility in your office? Are you suggesting that it would be a better place, than in the General Accounting Office?

Mr. HENSHAW. Thank you, Mr. McClory. We always appreciate those kind remarks. We get a lot of others, as you well know.

I think we are suggesting that we are keeping a good set of books. We are publishing the information on a timely and accurate basis. We feel we will not have to expand our operation that much to accept the responsibility, if that's the will of the committee, to administer this act, and I think we have gone ahead with the tentative proposals. As I mentioned, we will be able to have it operational within a few months, so under those guidelines, I think we can say I feel I think we can accept that and do a good job.

Mr. MCCLORY. Do you have use of the data processing equipment in the offices of the Clerk?

Mr. HENSHAW. No. We tie in with the office of HIS through our computer capacity but we have worked with them over years, as you know, in the finance office in a couple of our other offices. We do utilize their capacity. We have talked with them about this.

Mr. MCCLORY. Do you feel that if you were given authority to administer this new law, to act as recordkeeper for this legislation, that you would require additional hardware, for instance?

Mr. HENSHAW. No, sir; not at this time.

Mr. MCCLORY. You would need some additional personnel, but it would not necessitate a substantial increase in personnel?

Mr. HENSHAW. I don't think so. That's our judgment at this time.

I see no reason—unless we were inundated. We took over the new system of vouchering for the payments when we changed the payment system with Members, and at that time, we geared up to think we could take care of it, but we were inundated.

But I don't think it will be that sort of thing this time.

Mr. MCCLORY. Let me just indicate my concern over a potential requirement that may be placed in this legislation. That is, to require information in reports relating to contributors to the organization.

We could get into a mass of detailed information which would be virtually overwhelming. You might want to study those provisions and comment on the kind of burden that that would impose on you or the GAO, or whoever undertakes the bureaucratic morass of handling the informational input. I'm sure it could only be handled with a data processing system, but it could be burdensome to the

point of harassment of the official that would be charged with undertaking it, and expensive. Does this bother you? This legislation requires registration of organizations who lobby not only with the Congress, but who lobby the executive branch on legislative issues.

Do you think there's any problem as far as you being the record-keeper and the administrator of a law that would involve the executive branch?

Mr. HENSHAW. I will defer to Stan Brand. This is the area I'm not sure of.

Mr. BRAND. I don't think it would be a problem in this sense. The Clerk presently functions in the same capacity with respect to the Federal election law, which, as you know, is administered by the executive branch.

The FEC is an independent regulatory branch agency.

Mr. MCCLORY. You answered some questions in response to Mr. Harris about actions brought for the violation of the existing law back in 1954, 1949, and 1950.

This proposal now contains criminal penalties.

How would you feel about that? How would you feel about the requirement to initiate criminal actions and to undertake imposing criminal penalties against those that violate the law in any way?

Mr. BRAND. Of course, under the old law, criminal penalties are the responsibility of the Department of Justice. Under the proposed new law, they still would be.

The only interpositioning of the clerk in the enforcement process would be the fact that he would be point of entry for these filings; and, however, any enforcement authority would be properly and constitutionally with the Department of Justice.

I don't think it would put the Clerk in any tough position vis-a-vis enforcement, and he's presently in either under the election law or the ethics and Government law.

Mr. HENSHAW. I think we perform that function very much similar with the FEC with point of entry and make all referrals down there.

Mr. MCCLORY. You would probably prefer to not have criminal penalties in this law, would you?

Mr. HENSHAW. Whatever in your judgment you think is necessary.

Mr. BRAND. Criminal penalties would not give us any particular problems from the standpoint of administering the functions we would have.

Mr. MCCLORY. Thank you very much for your testimony.

Mr. DANIELSON. Thank you.

Mr. MCCLORY. Whether or not we have criminal penalties is our decision.

Mr. HENSHAW. If you were to be the point of entry, I mean the filing office and the custodian and maintainer of these lobbying records, would you in your organizational structure refer that to Mr. Duffy, the Office of Records and Registration?

Mr. HENSHAW. Yes, sir. That's Mr. Duffy, Steve Duffy. That's what he runs. He takes care of it.

Mr. DANIELSON. Your answer is yes?

Mr. HENSHAW. Yes.

Mr. DANIELSON. Thank you. How many personnel are in the Office of Records and Registration?

Mr. DUFFY. Twenty-four.

Mr. DANIELSON. Does that include everything from yourself down to the mail opener?

Mr. DUFFY. Right.

Mr. DANIELSON. Do you feel that you would require additional personnel if you were to be saddled with the responsibility for lobbying records?

Give a guess.

Mr. HENSHAW. My guesstimate is we would need maybe one or two people.

Mr. DANIELSON. I think you would, too.

On the computer work, have you as yet designed software for putting into the existing computer capacity the records which you are already maintaining?

Mr. DUFFY. We have a complete multifaceted program already designed.

It is planned to go into testing stages within the next 2 weeks or so. After putting documents into the system, we have all the wires and everything run into the office for the terminals.

Mr. DANIELSON. Have you made any preliminary runs?

Mr. DUFFY. We have all the system design completed in terms of what the capabilities will be.

Mr. DANIELSON. As to computers, from what you testify, I assume you will have access to the HIS program on a shared time basis.

Mr. DUFFY. One of the systems is in place and we will plus into one of their ports.

Mr. DANIELSON. There are those computers in Government which are not working up to capacity. There are lots of computers in comparison with the computer time needed, and I think you can plug into one without hurting anything.

You stated on page 4 of your statement, Mr. Henshaw, that your program calls for seven items which will compute total lobbying receipts and expenditures for each registrant by time, cross-referencing these figures by a registrant legislative interest, and the type of organization which is the lobbyist, automatically reported received, automatically finding the registrants who fail to file——

I guess that's two items, simultaneously listing reports filed, where you find them on the microfilm and, of course, they have a date on them, cross-referencing registrants with employers and clients. And then, of course, two items of doing mechanical work for your office, address labels, and the like.

Have you looked over the potential which would be described by H.R. 81 to see whether these seven or eight functions would be enough to cover the needs?

Mr. DUFFY. According to H.R. 81, they seem to—all are envisioned in the statute, except this one additional requirement of H.R. 81 which is cross-referencing a registrant or retainee on file with the Federal Election Commission.

Mr. DANIELSON. So your program would cover all of these things?

Mr. DUFFY. Except for that one item. We haven't envisioned that.

Mr. DANIELSON. Why don't you sort of envision it? I know you want to be credited with having foresight?

Why don't you foresee it?

I happen to be a dedicated believer that each House of Congress should run its own affairs. I am very, very reluctant to delegate the legislative branches' responsibilities to anyone other than the legislative branch. But I am a little concerned here and maybe you can help me on it.

The bill, as it is drafted, contemplates that we might have registration for lobbying of the executive branch function, as well as lobbying of legislative branch functions.

About the time the Clerk's Office starts overseeing some of those functions which take place in the executive branch, I anticipate we might have some problems.

Do you have any information you could give us on that?

Mr. HENSHAW. Once again, I have to defer to counsel. This is one that we have talked about. It's a little sticky, depending on what we can set up for our criteria for reporting.

Mr. DANIELSON. Let's let counsel answer.

Mr. BRAND. I think as I read the version of H.R. 81 that I have, that most of the lobbying with respect to the executive branch is, in effect, indirect lobbying of the Congress.

Mr. DANIELSON. It might be very direct. What answer did you come up with, sir?

Mr. BRAND. It says lobbying communication means, with respect to the Federal officer or employee described herein, an oral or written communication directed to such Federal officer or employee to influence the content of any bill, resolution, et cetera, or an oral or written communication directed to such Federal officer and, of course, those would include executive branch officers, to influence the content of disposition of any bill, resolution which has been transmitted or introduced in Congress, or any report thereon of the committee, any nomination or hearing or investigation being conducted by Congress, or committee, or subcommittee thereof.

Mr. DANIELSON. For example, you have the nomination of a person here. Now the only place that would come up, of course, would be in the other body, in the Senate.

I suppose you might have the nomination of John Doe to be Secretary of the Department of Education, let's say.

That wouldn't fit the House of Representatives, but if we were to use the legislative information material, it would probably end up with the Secretary of the Senate in that event.

Mr. BRAND. As I understand the definition, to the extent that there was an attempt to lobby Congress indirectly through use of the executive agency, that would be a lobbying communication for purposes of this act.

Mr. DANIELSON. You don't feel, though—you have looked it over and studied it and you don't feel you necessarily have a problem?

Mr. BRAND. I don't believe we do in light of the *Buckley* case which allows us to have this function.

Mr. DANIELSON. Where do you now refer matters which would apparently be a violation of the existing lobbying law?

Where do you refer them for enforcement?

Mr. BRAND. At this point, we have not established formal, thorough relationships with the Department of Justice, although we have talked to them from time to time about problems that come up under the act.

Mr. DANIELSON. How many years of experience have you had in this function that you're now occupying?

Mr. BRAND. Only the last several years that we've been actively pursuing——

Mr. DANIELSON. More than 3?

Mr. BRAND. No.

Mr. DANIELSON. Less than 2?

Mr. BRAND. No. It's actually about 2½ years.

Mr. DANIELSON. In that time, have you had occasion to refer any matter to Justice as a probable apparent law violation?

Mr. BRAND. We have referred things to them on a staff basis for their review in terms of a problem that we thought may be an apparent violation. We have asked them to give us an interpretation.

Mr. DANIELSON. How many of those——

Mr. BRAND. Only several.

Mr. DANIELSON. Several. Is that more than two?

Mr. BRAND. I don't know how many. Two or three.

Mr. DANIELSON. Two or three?

Mr. BRAND. We have had some reticence about going to them about this without any direct referral authority.

Mr. DANIELSON. I'm just trying to see the magnitude of that. Thank you.

Currently, are there records inspected by the press from time to time?

Mr. DUFFY. They come in on a regular basis when the filings are most recently filed.

Mr. DANIELSON. Are there inspections by the public interest groups?

Mr. DUFFY. I assume so. When an individual comes in to look at records, they put their names down to request the specific microfilm tape and we don't ask them any more than their address, just for our daily log.

Mr. DANIELSON. I've done that myself to see election returns.

Are the names of the people who inspect, are they all in that one log?

Mr. DUFFY. At the end of a day, we destroy the record because there's no reason to keep it. We just use it for our own inventory, for figures.

We count the actual number of people who visit the office.

Mr. DANIELSON. Is that broken down by those who wish to inspect the records for different reasons?

Mr. BRAND. Yes, on a daily basis.

Mr. DANIELSON. About what's your average daily inspection?

Mr. DUFFY. I would have to go back and check the records. I don't have the figures in front of me.

Mr. DANIELSON. How often do you see those records?

Every morning, I imagine, don't you?

Mr. DUFFY. They are compiled in our public inspection section and they are turned over to me on a regular basis.

Mr. DANIELSON. You mentioned 4,400 registrations, I believe, in response to Mr. Harris'. But I thought you said those were actually clients.

Mr. DUFFY. Those are clients. And from what I said, the figure of actual registrants is a smaller figure which we would have to determine.

Everything we do right now is manual.

Mr. DANIELSON. You don't know the number of lobbyists, as such, then? You are talking about clients?

Mr. DUFFY. That's exactly right.

Mr. DANIELSON. How are your records presently kept? On 3" by 5" cards, or something like that? "

Mr. DUFFY. 5" by 8" cards. But they are in a cardex system. It's all manual.

Mr. DANIELSON. I'm glad you are going to computer because I just didn't see——

Mr. DUFFY. So are the people in the office who have to go through this.

Mr. DANIELSON. They get pretty thumbworn.

You mentioned that you sent out notifications last fall or recently, anyway. Was that the first time you sent out notifications?

Mr. DUFFY. Yes. I don't know prior to when I came into the office, which was in 1974.

Mr. DANIELSON. That's 5 years?

Mr. DUFFY. I don't think they have been sent on a mass basis before that before.

Mr. DANIELSON. If you get the computer service, it would be a more realistic function.

Mr. DUFFY. That's correct.

Mr. HENSHAW. He hasn't been the chief of records and registration that long. He's just been with us that long.

Mr. DANIELSON. How long have you been chief?

Mr. DUFFY. Just 2 years.

Mr. DANIELSON. That makes him a senior member. You reduced inadequate reports from 40 percent to 10 percent.

How are the reports analyzed? Someone makes a judgment that this one is inadequate and this one is adequate.

How is that done currently?

Mr. DUFFY. By a preliminary desk review of each report filed.

Mr. DANIELSON. Do you do that?

Mr. DUFFY. I do not. We have two people in the office who review the reports.

Mr. DANIELSON. What is their level of compensation? They probably have a grade GS something or other.

Mr. DUFFY. We go by the House level system. One is House level 5 and one is House level 4.

Mr. DANIELSON. Is that high or low or where is that?

Mr. DUFFY. Five is $15,500, I think. $15,500. And the 4 is $13,600. I might be a little off.

Mr. DANIELSON. Are they the highest level people in your office?

Mr. DUFFY. They are not. They are just about in the middle.

Mr. DANIELSON. That is the only place in the present system where judgment is exercised?

Mr. DUFFY. All of the notifications that are sent, all letters that are sent based on the review are reviewed by the counsel in our office, the assistant chief.

Mr. DANIELSON. These two people sift out the probables?

Mr. DUFFY. They look for what on the face of the report seems to be a deficiency.

Mr. DANIELSON. And they refer them to a supervising type person, and that person makes a decision on whether or not to send out a notice of inadequacy?

Mr. DUFFY. That's correct, and these letters have all been approved by the counsel prior to their institution into the system.

Mr. DANIELSON. To what extent are these referrals further winnowed out, shrunken?

Mr. DUFFY. It's a form letter that goes out to the indivdiual indicating that they failed to include a piece of information, and it's a basic review of the letter to see that it is correct.

Mr. DANIELSON. To see that all of the blanks are filled more than anything else rather than what's in the blank?

Mr. DUFFY. That's correct. Whether the blank is filled and whether the letter has been signed or not. Something to that effect.

Mr. DANIELSON. If we are to go the legislative route, I assume the Secretary of the Senate would have to have a comparable type of arrangement for handling the Senate-related documents over there.

That's my assumption. Do you have any quarrel with it?

Mr. HENDERSON. No, sir.

Mr. DANIELSON. Are there any functions within the Congress in which both houses operate as a joint activity, in a commonly shared facility?

Mr. BRAND. We compile a quarterly filing and present them in the record.

Mr. DANIELSON. It would seem to me that if we are doing this through the legislative process, it certainly would be efficient and it might be desirable for the two houses to form a joint office for their records and registration.

There's no way to justify duplicating it, doing it two times.

Mr. BRAND. One complaint we have received is that under the present law, and it is not entirely clear, but under the present law, you need to register in both places and file in both places, even if you are in a sense only lobbying in one house.

Mr. DANIELSON. I understand that. This is a complaint you received from lobbyists.

Mr. BRAND. Yes.

Mr. DANIELSON. Why should we have to do it twice? I would say that is a justified complaint and it is something we ought to think about, if we go that route.

Is there any inspection of these filings for substance, anything that goes beyond saying whether a blank is filled in?

Mr. BRAND. We have reviewed them for substance in a limited sense. For instance, we get filers who will submit a form and fill it in, none, and then submit what they call an explanatory statement saying that we are not really lobbyists, but to protect ourselves from the criminal sanctions and because there seems to be some uncertainty about whether or not we need to register. We are filing

this supplementary statement which is not itself a registration, but here it is.

We have written to all of those people and said if you are going to register and file, you need to do that on the forms that have been prescribed for this purpose.

Mr. DANIELSON. You presently have no authority to check to find——

Suppose Lobbyist X, whom you know to be representing the biggest conglomerate in American economy on the world's most controversial bill, reports spending $5,000 in a quarter.

Part of my hypothetical is that you have got to assume that that sure isn't enough money to cover it.

What can you do or what do you do in cases like that?

Mr. BRAND. On that basis, there's nothing we can do. If he reports $5000——

Mr. DANIELSON. That's what I said. Assume everything that I told you to assume is assumed. What do you do?

Mr. BRAND. And assuming, again, as part of the hypothetical, that there was information that he, in fact, had spent more than that.

Mr. DANIELSON. All right. Assume everything you need. Assume everything you need in order to comfortably assume that he has reported $5,000 and you feel that you would be willing to die that he has spent at least $100,000.

Now what do you do?

Mr. BRAND. I'm not sure. We have done nothing in those instances.

Mr. DANIELSON. I think that's part of the problem and that's what I'm trying to get at. I don't think that you gentlemen necessarily deserve all the criticism that you get because I don't think that you have any tools to operate with.

Don't be so shy in standing up for yourself, for heaven's sake.

If someone spent $1 million and reported $5,000, you are sort of stuck, aren't you?

Mr. BRAND. That gets into the enforcement area.

Mr. DANIELSON. I realize that.

Mr. BRAND. It would have to be given to the Department of Justice.

Mr. DANIELSON. You are not afraid to say that's true. I have no further questions.

Mr. HARRIS. Mr. Chairman, I have no further questions except to compliment the Chairman, for his incisive questioning.

Mr. DANIELSON. I bless you. I don't get many compliments.

All I'm trying to say is I think there's something wrong with our system here. I don't know it's necessarily wrong with the clerk's office, but there's something wrong with the system.

That's all we are trying to get at.

Mr. MCCLORY. Could you add to our knowledge?

Mr. MCCLORY. I would only put in this thought: That is, that I don't know that the administrative agency, the body in which we repose responsibility for recordkeeping, must necessarily be the investigative and police department for this legislation.

I think we have existing investigative agencies in place and we should look to them.

I would not want to have the role of the Clerk or the GAO, augmented by a huge investigative staff, to be to go out, even on a random basis, and interrogate lobbyists or take complaints.

I think that responsibility should be vested elsewhere, I would like to see either the Office of the Clerk or the General Accounting Office given the responsibility for recordkeeping, which I think is going to be horrendous in itself. Other agencies should be given the responsibility for policing it, and investigating and, of course, prosecuting violations of the law.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. McClory, and I concur.

But there are times——

I read in last night's paper, yesterday's paper, that wherever we store our gold in New York, there's quite a chunk of it that was missing. And the newspaper story opined that maybe $500,000 worth of it could have evaporated and gone up the flue during the times when they melt it down.

But they are short another 80,000 pounds and it was kind of hard to figure out where it went.

I would think that if you ran into 80,000 pounds of missing gold, you might report that to somebody. I don't think that's asking too much. It's not making a witch hunter out of the clerk.

I remember a case I tried years ago in which a bank was short a little over $900,000 in its cash account, but the board of directors, it didn't occur to them that they ought to report that to somebody.

Some things sort of try one's credulity.

I think if you gentlemen are going to have the responsibility of keeping records, you should at least be given an avenue of relief when you find something so far out of joint that your conscience bothers you. I don't expect you to be a policeman. But we have to have some way for relief around here.

Mr. MCCLORY. Mr. Chairman, I object to the characterization.

Mr. DANIELSON. The objection is sustained. Thank you very much. It's been very helpful and I don't know what we are going to do, but thank you very much for your contribution.

[Witnesses excused.]

Mr. DANIELSON. We have a great treat. We have Representative Bill Nelson from Florida. He had an unavoidable conflict this morning.

Mr. MCCLORY. Could we take his testimony in his congressional district instead of here? [Laughter.]

Mr. DANIELSON. Mr. Nelson was the author of the lobbying regulation bill that has been adopted by the State of Florida and he has more than a passing interest in this. So Mr. Nelson, will you proceed. We will receive your statement in the record.

[The complete statement follows:]

SUBCOMMITTEE TESTIMONY BY CONGRESSMAN BILL NELSON ON LOBBYIST DISCLOSURE REFORM

Mr. Chairman, let me thank you and the members of the Subcommittee for permitting me this opportunity to share with you my strongly held belief that the legislation which you are considering here today * * * legislation to require much more detailed reporting and disclosure by organized lobbying groups, is perhaps some of the most important that the 96th Congress will consider.

Although I am but a freshman member of the Congress, I sit before you still nursing the wounds of a similar battle over lobbyist disclosure in the Florida

Legislature where last year, after a four year struggle, the Legislature passed a bill I introduced which for the first time placed lobbyist disclosure in the law.

While I feel that this is a vital issue at the state level, the need is still greater at the federal level by virtue of the magnitude of the lobbying here in the Nation's capital and the public's longheld distrust of both the Congress and lobbyists. We must take it upon ourselves to help restore public confidence not only in the Congress but also in those who provide a substantial part of the information on which decisions in this body are based—the representatives of legitimate groups rightfully and honestly seeking to make their voices heard.

To that end, I have joined with literally dozens of my colleagues in co-sponsoring lobbyist disclosure reform legislation. Mr. Chairman, I am delighted to be a co-sponsor of H.R. 81 which you have introduced with Mr. Rodino. I am also a co-sponsor of H.R. 1979 introduced by my colleagues Mr. Railsback and Mr. Kastenmeier. Let me quickly point out that this apparent duplicity stems not from confusion, but rather from the strong belief that legislation in this area is vital and that both of these bills have much to be said for them.

I support a lobbyist bill which goes further than H.R. 81 in that it avoids addressing grass roots lobbying. On the other hand, H.R. 1979 may unnecessarily require excessive disclosure of an organization's effort to apply pressure on the Congress from back home. I would hope that the subcommittee would address this problem and suggest language which will meet the Constitutional test yet will provide the public with information regarding major grass roots lobbying efforts. I am afraid that to do less will be providing a loophole in the law which would permit concealing a major thrust of an organization's effort.

I sincerely hope that the House will not allow differences such as these to prevent passage of this vital legislation. We must not allow the image of the fat cat lobbyist strolling the halls of the Capitol with hundred dollar bills bulging from his pockets to be perpetuated when in fact the overwhelming majority of Congressional lobbyists are honorable and are providing useful information. The public does not fully realize, in my view, that those lobbyists who fail to accurately state the issue or who would misrepresent the effects of a piece of legislation for their own purposes soon lose their credibility. This legislation will assure that all lobbyists will not have to suffer for the misdeeds of a few and it will bring yet another ray of sunshine onto the processes of government. It will be a monumental step toward restoring public confidence in our government.

Mr. Chairman, thank you again for allowing me this opportunity to share my feelings with you on this issue.

TESTIMONY OF HON. BILL NELSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. NELSON. I would be delighted for all of you to come down to central Florida and let me give this testimony there. We might arrange a side trip for you to Disneyworld and the Kennedy Space Center as well.

Mr. Chairman, I am not going to read from the statement. Let me refer to the record. I want to tell you how much I have enjoyed this discussion for the last hour. You all have asked the questions that, from my experience of coming out 6 years in the State legislature, having had 4 years to try to pass this legislation at the State level, you are asking the questions that are right on.

The main thing centers around the line of your inquiry, Mr. Chairman, and that is that the existing law really doesn't give anyone the impetus or the tools to enforce. Let me draw the analogy that has occurred in Florida.

We had a house rule and a senate rule in the State legislature that nobody really paid any attention to. It was there for the records but there was no mention of enforcement. There was no means of really determining if people, in fact, were registering and reporting their expenses per period. So you need to move with something with chief in it.

The questioning has been raised here over whether or not you should have any criminal penalties. The way I read the Rodino Bill

is that a criminal penalty would only be imposed where there was a knowingly and willfully making of a false statement, and I would certainly encourage the committee—what's right is right and what's wrong is wrong. If somebody is knowingly and willingly making false statements, then I don't think the fact that there are criminal sanctions is going to deter anybody from coming into the political participation process, so I would encourage you to keep the criminal sanctions.

The question asked to the executive branch lobby, if this were to become a big deal as to whether or not this legislation was going to pass, then I can only share with you what I had to do, bend, and give in the process of compromise in order to get that legislation on the books in Florida. I took at the executive branch lobby although I want it very much and ultimately I would expect that the legislature of Florida will, in fact, add that, but for the first time around of trying to get something on the books that had some meaningful substance, that is part of the compromise that I enacted.

One of the aspects that we can go into and point out that there was going to be efficiency in the process because we set up a joint office between the senate, secretary, and the house clerk so that we could point out that instead of the nuisance of filing in two places, it can be filed with the one with the commensurate fiscal efficiences that occurred as a result of filing in one place.

I have never heard in 4 years in which lobbyists beat me for the first 3 years—they kicked my head in, and it finally, as a result of the fact our of crowd taking over the legislature, I had the political power base then to finally pass the law. I kept trying to explain to the lobbyists that this is not something that is going to be a nuisance to you, but it's going to be for your own good because the public out there is very sinical about you, Mr. Lobbyist, and all you have to do is to engage in a campaign to find out that that fellow on the street, in fact, thinks that that lobbyist is somebody with a black head with a turned-up collar that says psst when a Congressman when he walks by, but that in fact in my State legislative experience I found that quite the opposite was true, that lobbyists were, very reputable people, some very close personal friends of mine and so that the whole process of opening up and disclosing was ultimately to their best interest to try to restore credibility, their credibility in the Government system and to show that they were not somebody that was as Herblock so often characterizes in his cartoons, with the dollar bills, the hundred-dollar bills bulging from the pockets as they walk through the halls of Congress.

I think it is a credibility matter. It is a continuum of the process of opening up Government that you all had started with the financial disclosure last year and the sunshine law that was adopted several years previously. It's a part of their process and the lobbyist who is really doing his job well as an advocate for his client or clients has nothing to fear from this because he is going to be the most effective spokesman for his client if, in fact, he is shooting straight; and if he doens't shoot straight with the Congressman or Senator, then that Congressman or Senator is going to find out about it and that lobbyist is going to loose his effectiveness, so in my judgement I pass that along to you after having come from a bruising battle where I have had my nose blooded for the last 4

years and wanted to share this with you and tell you that I am excited to be here as a freshman and to, in some little way, participate in what I consider very, very important legislation.

Mr. Chairman, thank you.

Mr. DANIELSON. Thank you very much. At this time I'll yield to my friend from Virginia, Mr. Harris,

Mr. HARRIS. Mr. Chairman, I want to say that I'm excited to hear that Congressmen Nelson put it on the line the way he did. You didn't have to tell us that you had experienced. Your competence indicates you have experienced. You know what you are talking about. I want to compliment you for taking the time and pressing in an area of reform that all the pressures while you are here will dissuade you from pressing. I urge you to keep it up.

Mr. NELSON. You are kind to come and Mr. Harris. I appreciate it.

Mr. DANIELSON. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. Thank you, Mr. Nelson, for your testimony. I judge that the lobbyists that you had your problems with in the Florida legislature, were corporations—you make reference to the fat-cats in your testimony. These were not big labor organizations? These were not public interest lobbys? These were not the Ralph Nader-type of lobbyists that were bothering you? No lobbyists from church organizations I judge, were there or environmental groups that were campaigning against you? These were corporate lobbyists, were they not?

Mr. NELSON. Not at all. I tried to emphasize in my testimony that my experience with lobbyists was very good. It was that threshold that they, of not wanting to put this into law because a lot of them felt like it was going to be some punitive measure and that it took me a long time to show them, plus having the political power base with which to be able to ram through the registratration, to show them, in fact, that this was in their best interest.

Mr. MCCLORY. So you are referring to the broad spectrum of lobbyists, including the public interest groups, environmentalists?

Mr. NELSON. Yes, indeed. Now, the reference to the fat-cats that you were referring to was in my referring back to what is the traditional——

Mr. MCCLORY. The public perception?

Mr. NELSON. The Herblock cartoon.

Mr. MCCLORY. A number of us have concerns withregard to first amendment rights, and the chilling effect that this legislation might have on persons or organizations. I would judge—don't you feel—that this legislation would discourage the kind of valuable lobbying to which you have made reference in your statement?

Mr. NELSON. Indeed I do. There is a point, a line, beyond which you go too far. I have assigned on as a cosponsor on both of the major bills, 81 and 1979. I have done some recognizing that there are good parts of both. What my urging upon you would be is don't loose the legislation because one group is polarized by not wanting to go into any kind of expensive grass-roots lobbying. On the other hand, the other group is polarized by wanting to go all the way. Find something of the middle ground, if, in fact, the legislation is going to be lost.

Mr. McCLORY. And resolve doubts in favor of the Constitution, and in favor of the right of the individual to petition of communicate with his representatives of the government.

Mr. NELSON. Indeed. I am reminded of the oath that I took on January 15, that I would uphold the Constitution.

Mr. McCLORY. What about exempting communications, for example, on a geographic basis as far as the congressional district is concerned or a Statewide basis, for instance?

Mr. NELSON. In the case of a senator, yes I favor that. In fact, that is written in the copy. I have a copy of 1979 here and that is an exemption so that you don't impede the process of people having accessability to their decisionmakers.

Mr. McCLORY. Thank you very much.

Mr. DANIELSON. Thank you very much, Mr. Nelson, for your contribution. It's very valuable.

If you can very breifly touch upon it, I would like to have your comments on what problems you had in setting up this joint house-senate registration.

Mr. NELSON. We were at the time of considerable fiscal concern and so I used as one of my arguments that we could cut in half expenditures from what was required under the house rule and the senate rule in the State legislature where you had registrations duplicated what would be created in a joint office under the law that we passed in Florida, so I used a fiscal argument there.

As a practical matter, I've talked to the clerk of the house in the Florida legislature and he says that as a practical matter he's really shouldering the load instead of the senate secretary, but that's a matter of personalities that they were working out the situation. I think that that can be handled. If the clerk of our house and the secretary of the senate are, in fact, resolved to create a joint office and to cooperate with each other, it can be done.

Mr. DANIELSON. I thank you. We do have ample precedents if that should be the route we go. There's a number of joint committees in congress, and I am sure there are other joint—we have one architect at the Capitol; we don't have two of them. We have one police force, et cetera, so there are ample guideline to follow if it can be worked out.

Thank you very much, Mr. Nelson. You contribution is great. We appreciate it. It's also by someone who has been there, which makes a lot of difference.

[Witness excused.]

Mr. DANIELSON. We have an additional witness, Mr. Kenneth Young, Director, Department of Legislation of the AFL–CIO, who is accompanied by Mr. Kenneth Meiklejohn.

Would you gentlemen come forward and let us hear from you.

Without objection, the statement of Mr. Kenneth Young will be received in the record and you can just proceed ad lib. It usually is the most effective way to go.

[The complete statement follows:]

STATEMENT OF KENNETH YOUNG, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, the AFL–CIO appreciates this opportunity once again to present to you and the members of the Subcommittee on Administrative Law and Governmen-

tal Relations our views of legislation to provide for public disclosure of lobbying activities. This legislation is contained in H.R. 81, which you and Chairman Rodino have introduced, H.R. 1979, sponsored by Congressman Railsback and Kastenmeier, and several other related bills.

Of course, this is not the first time we have seen these measures. H.R. 81 is identical with the bill reported by the Committee on the Judiciary last year; H.R. 1979 is the same as the bill which the House of Representatives subsequently passed last year. As we also know, the Senate took no action at all on lobbying disclosure last year.

We thought, Mr. Chairman, that the House Judiciary Committee did a good job in reporting the bill it sent to the House floor last year. And, we thought the House of Representatives improved and strengthened the bill prior to its passage. The AFL–CIO supported the House bill and urged the Senate to take similar action.

We do not share the fears that concern others—such as the American Civil Liberties Union, some public interest groups, business organizations, and trade associations. The AFL–CIO simply does not believe that requiring organizations that seek to influence Congress through paid lobbyists or retained agents to register and file reports on their lobbying activities constitutes an interference with First Amendment rights of free speech, free press, freedom of association or the right of petition for redress of grievances.

We have encountered no difficulty and suffered no loss of our liberties in complying with the existing Federal Regulation of Lobbying Act. And, we have heard of no other organization that engages in lobbying and reports under that Act citing any such difficulty or loss of freedom in complying with the law.

Of course, the experience under present law is not an instructive as it might be because most organizations that engage in lobbying pay no attention to their obligations. It is estimated that although the number of lobbyists in Washington has increased from about 8,000 to 15,000 during the past five years, fewer than 2,000 are registered and reporting under the 1946 law.

The AFL–CIO has not acted on the view, Mr. Chairman, that the present Federal Regulation of Lobbying Act shoudl be ignored because of the loopholes that admittedly exist in it or because of its ineffectiveness in providing comprehensive information on lobbying activity. We have engaged in numerous discussions with representatives of the Office of the Clerk of the House of Representatives looking toward improvement and strengthening of the existing law. Much can be done along this line, but we believe the loopholes and defects of the present law are such that a new statute, generally along the lines of H.R. 1979, is called for.

We do not stand alone in this view. Indeed, there is a general consensus that a new law is needed which will require organizations retaining or employing professional lobbyists to register and to report in reasonable detail on their lobbying activities. Because of this general consensus, both the Senate and House of Representatives passed lobbying disclosure bills in the 94th Congress but were unable to resolve their substantial differences in the waning days of that Congress.

Again, in 1978, although the House passed a generally reasonable and effective bill, the Senate failed to take action on lobbying disclosure legislation. It is time that the impasse be broken, and we see in the early start you have made, Mr. Chairman, a real opportunity to achieve success during this Congress.

In the course of the deliberations that have taken place over this legislation during the past four years, certain basic principles have become clear. First, it is clear that lobbying is clearly an aspect of the constitutional right to "petition the government for redress of grievance" and is entitled to effective protection as such. Equally, it is clear, the people and Congress have a right to be informed about the activities of organizations that hire or employ people to influence the legislative process. A careful balance is required between these two basic principles lest one of them impinge unduly on the other. And finally, over-regulation may be even more ineffective than non-disclosure since it would drown useful information in a sea of unnecessary and meaningless detail.

The AFL–CIO believes that the coverage and exclusion provisions of both H.R. 81 and H.R. 1979 effectively accomplish such a balance and should be included in any lobbying disclosure bill this Committee reports. These provisions exclude from the reporting requirement statements made on request or submitted for inclusion in a hearing record, public dissemination of views through the media, personal expressions of opinion, petitions for redress of grievances, and inquiries concerning the status or subject matter of an issue.

Among the communications excluded from the obligation to report are those addressed to an organization's "home-State" Senator or "home-District" Congressmen, or to members of their respective personal staffs. Under both proposed bills, a

lobbying campaign must, therefore, be more than local and must involve substantial expenditure of funds before there is any obligation to report.

There is, of course, no obligation to report unless the so-called "triggering" requirements are met. We believe these "triggers" are reasonable measures of the degree of lobbying intensity that separates sporadic activity that is non-reportable from a larger-scale and more substantial effort to influence legislature.

Further, only organizations would be required to register and report under the provisions of H.R. 81 and H.R. 1979. Unlike present law, neither the persons whom the organization retains nor those it employs to lobby are required to register or report.

Both H.R. 81 and H.R. 1979 contain similar provisions for registration, record-keeping and reporting by organizations that engage in lobbying. Both bills call for an itemized listing of expenditures in excess of $35 to or for the benefit of any Senator or Congressman, any officer or employee of the Senate or House of Representatives or any employee of any Senator or Congressman or any Committee or officer of the Congress, or the Comptroller General or certain officers or members of the staff of the General Accounting Office.

Another provision included in both bills calls for disclosure of expenditures when the total cost exceeds $500 for any reception, dinner, or other similar event paid for by the reporting organization which is held for the benefit of any such Federal officer or employee, regardless of the number of persons in attendance. The AFL-CIO supports both of these provisions.

We are also in agreement with the provisions requiring the identification of any retainee of the reporting organization and of any employee who engages in lobbying on each of seven days or more and either the total expenditures paid to any such retainee or employee or the amount attributable to his engaging in such activities where this can be determined in a manner acceptable to the Comptroller General. This information is essential if the scope and significance of the issue on which the lobbying is done are to be made known to Congress and the public.

In addition to these provisions, however, H.R. 1979 includes a number of additional provisions—approved by the House in the last Congress—which we beleive are essential to any effective lobbying disclosure bill.

H.R. 1979 requires reporting organizations to:

(1) describe each of up to fifteen issues on which it spent the greatest proportion of its lobbying efforts during the reporting period and identify the retainees, employees or any of its chief executive officers who worked on any of these issues;

(2) provide information on its activities soliciting others to lobby on its behalf, including a description of the issues involved, the means used to solicit such assistance, the identity of any person retained, the number of persons reached and the name of any newspaper or other publication, or radio or television station used where the cost exceeds $5,000;

(3) list in its fourth quarter report, where its total lobbying costs exceed one percent of its total annual income, each organization from which it received $3,000 or more in dues or contributions to be used in whole or part in lobbying activity.

The AFL-CIO fully supported the inclusion of these provisions in the bill that passed the House of Representatives last year. We believe it makes sense to require each organization that engages in lobbying to identify the major issues on which it lobbied, and in connection with each issue, to provide the names of employees and chief executive officers who engaged in the lobbying. We are convinced that the chief executive officer who lobbies should be included in the organization's lobbying report even if he is unpaid, while the activities of unpaid volunteers should not be reported.

Similarly, we think it is essential that "grassroots" lobbying resulting from the solicitation activities of major lobbying organizations should be reported. The purposes of the legislation will not be achieved if the growing solicitation of "grassroots" campaigns is not disclosed.

And, finally, we see no real threat to constitutional freedoms in the provisions for reporting of dues and contributions paid by one organization to another organization for purposes of lobbying activity under the terms provided in H.R. 1979. Failure to include this kind of information in the data to be reported would largely vitiate the effectiveness of the legislation.

In conclusion, Mr. Chairman, we would emphasize that over the years the AFL-CIO has consistently, and without reluctance, complied with all of the requirements of the present lobbying disclosure law. We are proud of our lobbying activity on behalf of the interests and welfare of working people and of our role as "people's lobby" in many legislative campaigns. We have recognized the present law as weak and ineffective, and we have worked along with many other public interest groups

to change that law and make it better. The time to change the present ineffective law is long overdue.

All too often, the American people believe that lobbying is a secretive and shadowy activity harmful to the nation. Loopholes in the present law lend credence to this viewpoint. The AFL-CIO believes—firmly—that legitimate lobbying serves a useful and beneficial function. Such lobbying need not fear from full disclosure.

As we have in the past two Congresses, the AFL-CIO will support legislation aimed at strengthening the present Federal Regulation of Lobbying Act and eliminating the loopholes that have made that legislation a mockery. We believe that H.R. 1979 accomplishes these goals and urge this committee to report out this legislation at an early date.

TESTIMONY OF KENNETH YOUNG, DIRECTOR, DEPARTMENT OF LEGISLATION OF THE AFL-CIO, ACCOMPANIED BY KENNETH MEIKLEJOHN

Mr. DANIELSON. For the record you have a third person with you. Would you identify him please.

Mr. YOUNG. Mr. Chairman, with me on my right is Mr. Lawrence Gold, special counsel for the AFL-CIO. On my left is Mr. Kenneth Meiklejohn.

Mr. DANIELSON. Thank you. Proceed.

Mr. YOUNG. Mr. Chairman, I would ask that out full statement be placed in the record.

Mr. DANIELSON. Without objection it has already been so received. Thank you.

Mr. YOUNG. If I could, I will summarize.

Mr. DANIELSON. I would appreciate that.

Mr. YOUNG. Mr. Chairman, as you know this is not the first time we have seen these measures or worked on these bills. H.R. 81 is identical with the bill reported by the committee last year. H.R. 1979 is the same bill which the House of Representatives subsequently passed. As I believe this committee knows. We do not believe or share the fears of some of the others that require in organizations to seek to influence lobbyists constitutes interference with first amendment rights of free speech, free press, freedom of association. We have encountered no difficulty and suffered no loss of our liberties in complying with the existing Federal Regulation of Lobbying Act.

The experience under present law, in fact, is not as instructive as it might be, because most organizations that engage in lobbying pay no attention to their obligations. We have engaged in numerous discussions with representatives of the Office of the Clerk of the House of Representatives looking toward improvement and strengthening of the existing law.

We would come down on the side of H.R. 1979 because we did support those differences on the floor in terms of the amendments. We think those amendments are important. There, of course, I am referring specifically to the listing of the 15 issues and what I would call a cross-indexing by the individuals, including the chief executive officers of the organization, the solicitation amendment that was added, and the contribution amendment that added. We do believe that it is important to cover grassroots solicitation activity because we think this is a growing type of lobby and it is important that it be reported and disclosed and be available, both to the members and to the public.

Finally, Mr. Chairman, let me say that we in the AFL-CIO over the years have consistently and have without reluctance complied

with the requirements of the disclosure law. I think basically because we are proud of our lobbying activity on behalf of the interests of the welfare of the working people and of our role as a people's lobby in many legislative campaigns. We recognize the present law as being weak and ineffective and it is not wrong that we work with many of the groups to try and change the law and make it better and stronger.

I think I find myself in full agreement with Congressman Nelson's earlier comments. We think that today the American people believe lobbying is secretive and a shadowy activity, harmful to the Nation. We think that the present law will not lend a credence to this viewpoint. The AFL–CIO is convinced that lobbying serves a useful and beneficial function and as such, lobbying and lobbyists have no fear of full disclosure.

As we have in the past two Congresses, the AFL–CIO will continue to support legislation aimed at strengthening the present Federal regulation of lobbying activity. We will work to eliminate loopholes that we think have made this legislation a mockery.

We believe H.R. 1979 accomplishes the goals that we can seek an we urge this committee to report out this legislation or similar legislation at an early date. I thank you.

Mr. DANIELSON. Thank you for a concise and to-the-point statement. Mr. McClory of Illinois.

Mr. MCCLORY. The only thing that bothers me in your statement is your strong support for grassroots lobbying. It seems to me that would adversely affect the working men and women in the country, involving them in excessive reporting. I think it may be chilling the communication that they might otherwise make. I am thinking of a number of instances when I've heard from so many workers on labor issues. Right now, the Teamsters have a big grassroots effort going against bills to deregulate the trucking industry.

I just fear that you are providing a disservice to your own interests, the interests of the men and women that your organization represents. You don't have that feeling at all?

Mr. YOUNG. Mr. McClory, if we thought that the legislation was going to have a chilling effect on lobbying, I think we would oppose those provisions. We just simply do not believe that H.R. 1979 does that. We think the main reporting is going to be done by the organizations that stimulate the request for the grassroots lobbying, not really by the legitimate grassroots interests.

Mr. MCCLORY. One other point of the bill that I interested in, has to do with an exemption for travel expenses in H.R. 81 and H.R. 1979. I've sat in that chamber with the gallery full of farmers who have travelled here to apply pressure to us through lobbying activity, and yet all their travel expense would be exempted from the cost of lobbying. Whereas the person who communicates or engages in lobbying in other ways, has to report all of the amount that is expended. Don't you think that that's unfair to permit that kind of expenditures to be exempted and all the rest of the expenditures to lobbyists to be covered?

Mr. YOUNG. I don't have a really strong objection to covering a period. I don't think it's necessary because when people come in here, Congress certainly knows who's here. Everybody in Washington knew when the farmers were here. I don't think there's a

requirement for a disclosure provision saying we farmers are here. My problem in that area is that if you get people coming back to lobby, it seems to me that it is highly legitimate. It's about to be highly visible. If you have people on retainer or you are bringing in special people and employing them for a certain activity and they meet the qualifications of this bill, that's a different situation.

Mr. McCLORY. I yield back. Thank you very much.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. Mr. Chairman, I know we are on the second bell, so I presume that the chairman would like for me to be brief; is that correct?

I want to commend the chairman on the clever strategy that he's used with regard to this. I will limit myself to congratulating you for the forthright testimony that you made. I think I understand that you are proud to be a lobbyist and feel that lobbying is an important part of our Government.

Mr. YOUNG. Yes.

Mr. HARRIS. You don't find it a chilling effect to go ahead and register and say that you are a lobbyist?

Mr. YOUNG. I get up at public meetings and people who introduce me go to tremendous lengths to introduce me as a legislative consultant, liaison person, everything but lobbyist. I always start my remarks by saying, Forget that title; I'm a lobbyist.

Mr. HARRIS. Tell them you are a registered lobbyist and that's the very best kind.

Mr. YOUNG. I'm proud of being a lobbyist and I have no problem at all with changing all these different definitions as to what I do.

Mr. HARRIS. I don't understand why other people are reluctant or seem reluctant to do that. Do you understand that?

Mr. YOUNG. I never have.

Mr. HARRIS. I would like to make a final point, that last year we had some difficulties in properly defining the threshold so that those who do not like to be called lobbyists would not have to register. Do you have any disagreement with the necessity of having a threshold that would, in fact, require those that participate actively in lobbying go ahead and register?

Mr. YOUNG. The answer to your question is that we don't have any difficulty. I think there are clearly some area where it is tough to set up some of the thresholds. We can certainly live with this present legislation, but we are aware of your concerns and recognize some of the problems. I think we are all trying to set up thresholds that make sense and that would indeed cover the lobbyists and exclude, not only the volunteers, but people who are not doing substantial activity.

Mr. HARRIS. You believe, along with me, that if an organization has 40 individual lobbyists, each of whom does 6 days per quarter, that they should probably register? You agree with that?

Mr. YOUNG. Yes; I would think so.

Mr. DANIELSON. The time of the gentlemen has expired and our time has expired. The subcommittee will meet tomorrow morning. Thank you kindly, gentlemen.

[Whereupon, at 11:40 the proceedings were adjourned.]

PUBLIC DISCLOSURE OF LOBBYING ACTIVITY

WEDNESDAY, MARCH 28, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:45 a.m. in room B-352 of the Rayburn House Office Building; the Honorable George E. Danielson, chairman of the subcommittee, presiding.

Present: Representatives Danielson, Moorhead, and Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer, assistant counsel; and Alan F. Coffey, associate counsel.

Mr. DANIELSON. The hour of 9:45 having arrived, and a quorum being present, we will proceed with our hearing on H.R. 81 and companion bills.

Our witnesses this morning consist of an advocate of several so-called subinterest groups.

In the hopes that we can make some order out of this collection, I am appointing you, Ms. Cohen, temporary—and that means the Lord giveth and the Lord taketh away—moderator. I hope you will moderate vigorously and with a great marshaling of time. We have 1 hour and 44 minutes remaining, and that is all there is going to be.

So will you proceed, please.

TESTIMONY OF RHEA L. COHEN, WASHINGTON REPRESENTATIVE, SIERRA CLUB; ACCOMPANIED BY KEVIN O'DONNELL, ASSOCIATE DIRECTOR OF THE NATIONAL COMMISSION OF LAW ENFORCEMENT AND SOCIAL JUSTICE; MICHAEL BEARD, EXECUTIVE DIRECTOR, NATIONAL COALITION TO BAN HANDGUNS; RANDAL BOWMAN, FEDERAL LIAISON, NATIONAL RIFLE ASSOCIATION; AND CAROL WERNER, LEGISLATIVE DIRECTOR, NATIONAL ABORTION RIGHTS ACTION LEAGUE

Ms. COHEN. Thank you, Mr. Chairman.

I have told all the members of this panel that we have 5 minutes each for our organization's statements.

Mr. DANIELSON. Excellent. Go ahead.

Ms. COHEN. And I have their promise that they will try.

Mr. DANIELSON. Would you be good enough, for the record, to identify your friends here.

Ms. COHEN. First of all, I wanted to thank you for inviting us, because this is an unusual occasion for us all, and we appreciate being here today to talk to you about this legislation.

On the far left is Kevin O'Donnell, associate director, National Commission of Law Enforcement and Social Justice.

And to my near left is Mr. Michael Beard, executive director, National Coalition to Ban Handguns.

To my right is Mr. Randal Bowman, Federal liaison, National Rifle Association.

And to my far right is Ms. Carol Werner, legislative director, National Abortion Rights Action League.

One other organization—well, actually two others were invited and could not send representatives today. One is the National Wildlife Federation, which I understand has introduced a statement for the record—and they might have done that already.

And another group that was invited, and that is the National Right to Life Committee which could not provide a witness today.

On the statement that has my name at the top, is an introductory statement. I am not going to go through the entire——

Mr. DANIELSON. I think we have two with your name on it.

Ms. COHEN. Yes. You have one without a letterhead, and that is the one that I am referring to now. It has an attachment that shows a number of organizations that have signed a letter of last year, including—as I was saying—the National Right to Life Committee, along with the Sierra Club, and most of the other groups here.

Mr. DANIELSON. This will not come out of your time.

Ms. COHEN. Thank you.

Mr. DANIELSON. We have these statements.

Ms. COHEN. Yes.

Mr. DANIELSON. I think we would save a lot of time if we would just simply identify them one by one for the record, and without objection we will receive them fully in the record.

Then you are free, and you can make your presentation without being tied down to a piece of paper, and we will not overlook putting something in the records.

Why do you not just read out the indication of these——

Ms. COHEN. I can do that for the ones that I have put in the record, and I would ask the other members of the panel to do so.

The first one, without the letterhead, is a statement of Rhea Cohen to introduce Public Interest Group Panel.

Mr. DANIELSON. Fine. This is dated March 14, 1979.

Ms. COHEN. The second one that I would introduce into the record has my name on it, with the Sierra Club letterhead—

No. This is the—the one I am introducing now is the Brock Evans statement, please. This is the one that the executive director would have given today had he been here. I will read it instead.

Mr. DANIELSON. It likewise is dated March 14, 1979, and is captioned "Summary of Issues Raised."

That is the first caption.

Ms. COHEN. In the last Sierra Club paper, strictly for the record, and not to be read today, is also dated March 14. It is a statement of Rhea L. Cohen and Brock Evans of the Sierra Club. And it is a more comprehensive document.

Mr. DANIELSON. Fine.

We also have here a statement of Kevin M. O'Donnell, on the letterhead of the National Commission on Law Enforcement and Social Justice. It bears the date of March 28, 1979.

That is your statement, sir?

Mr. O'DONNELL. That is correct.

Mr. DANIELSON. We have another one captioned—it is on 14-inch paper—captioned "Statement of Michael K. Beard, Executive Director of the National Coalition to Ban Handguns", also dated March 14, 1979.

And we also have one—on the cover sheet is the National Rifle Association of America, the statement of Randal Bowman. And likewise it is dated March 14, 1979.

And another statement of Carol Werner, Legislative Director of the National Abortion Rights Action League, dated March 14, 1979.

Now, I do have—and we might as well finish this—a statement of Joel T. Thomas, Counsel, National Wildlife Federation, dated March 21, 1979.

Do you have any others, Ms. Cohen?

Ms. COHEN. I do not, no.

Mr. DANIELSON. Do we, counsel?

Without objection, each and all of these statements are received in the record. And counsel, please be sure that our reporter has copies of each of them.

Now, you are free.

Ms. COHEN. Thank you, Mr. Chairman.

To just finish this off, this introduction,

Mr. Chairman and members of the subcommittee:

Though we are not a coalition, the organizational representatives here today agree on certain basics: That our groups exist because the U.S. Constitution protects the free flow of ideas to promote rational decisionmaking in a participatory democracy, and that our members believe that their voices are better heard collectively with other likeminded people, than they would be individually.

The so-called public interest groups, such as those represented today, operate not for the monetary profit of their members but to advocate certain benefits for U.S. residents in general. Until now, they have assisted large numbers of individuals to express their political beliefs without fear of harassment or retaliation, blacklisting or witchhunting, or worse. This is a tradition deeply rooted in the earliest history of our Nation—a tradition that is in imminent danger of being reversed by legislation that is now before the House Judiciary Committee.

These are positions that public interest groups have expressed over the past 3 years about proposals for lobbying disclosure.

We are hopeful that there will be time for questions, and I would like to go right into the Sierra Club's statement, if I may. This would be the statement that was to be delivered by Brock Evans——

Mr. DANIELSON. Ma'am, you may read it. But it would certainly be a lot more effective if you would just tell us in your own inimitable manner what it says. We of course can read it.

Ms. COHEN. Mr. Chairman, I do want to say that the piece of legislation that we would support is H.R. 81, if it were amended according to many of the recommendations that have already been

given by the public interests groups, and especially those recommended by the American Civil Liberties Union.

We have some points that affect the Sierra Club directly, some problems that I would like to relate to you.

Mr. DANIELSON. Surely.

Ms. COHEN. For the most part these are problems that would come to us under H.R. 1979 or similar legislation.

First, volunteers would have to keep records, whether or not they assisted anyone paid by any unit of the club—section, group, chapter, regional counsel, field office, headquarters, or national committee—if those members worked to organize public support on Federal issues or legislation. Details for each separate issue would include expenses, such as printing, postage, telephone/telegram bills; and the number of people reached and by what means. All of this information would have to be kept for 5 years, subject to audit, subpena, criminal fines, and jail terms. Even if volunteers agreed to spend their limited time keeping records instead of working on issues, they might feel that they were under surveillance for working on controversial issues.

Besides that, we have many club units that have the political savvy to contact congressional committees and not just their local Senators and Members of Congress, and this would make more than 13 lobbying communications in a quarter. This would qualify them as lobbying organizations, activating the requirements for reporting and recordkeeping.

Lobbying units of the club would either have to do the reporting themselves or furnish data to Sierra Club headquarters for reporting. In either case, those units would be responsible for the recordkeeping, even though most of them do not have permanent office space or full-time staff. Even if the headquarters of the organization wanted to report for them, the records would have to be removed, reassembled, and sent from the chapter or the group. And we take a dim view of getting the kind of comprehensive records back that would be needed for compliance.

Further, if organizations such as subgroups or large groups like ours need to keep records that are not being kept, that would mean more expenditure, and in many States around the country, States have placed a limit on the operational and management costs of an organization, or for that organization to qualify as a fundraising organization.

Many of our subgroups are very near to that level. It costs a lot to put out mailers and to do other things to raise money and keep an organization together. And 15 percent is sometimes the amount of your income. That is the limit set by the States on what you can spend to keep your organization together.

Mr. DANIELSON. Will you expand on that a little bit, please. I will give you another minute, so please——

Ms. COHEN. One of our problems is that while we collect dues nationwide, that does not pay for the activities of the chapter, and to an extent, some of the national dues go back.

When a chapter has a major issue to work on, they have to raise the money on their own. When they do that, we need a permit under State law, usually.

Many States have a limit on the amount of money those organizations can spend on operations before they can qualify for that permit.

If those are recordkeeping organizations—under the Lobby Disclosure Act—subgroups of the Sierra Club that do lobby——

Mr. DANIELSON. Just let me interrupt you again

I do not want to increase your burdens. I honestly do not. But I do not know anything about this phenomenon that you have just mentioned. I believe you, but could you—without straining your budget—give us a little help? I did not know that States had such laws.

And if I can have a little information, I would like to have it so that we can put it in the record.

And that gives birth to another thought that we could, I suppose, preempt that area in a Federal law so that you would not be restricted in that particular regard. I think we could. Anyway, we can try.

Ms. COHEN. Mr. Chairman, I would be glad to supply more information on that.

Mr. DANIELSON. It is not on your time.

Ms. COHEN. I would draw your attention to one page in the testimony of that thicker paper that we are inserting in the record, because our comptroller last year put together a list of State requirements that do impact on organizations like ours.

Mr. DANIELSON. Is it this statement?

Ms. COHEN. It may not be sufficient. I will check with your staff.

Mr. DANIELSON. I never got these, unfortunately, until this morning. You may not know it, but we have a new rule that statements come in three business days ahead of a meeting. That way we have a chance to read them.

Ms. COHEN. Well, I think you had mine on March 14.

Mr. DANIELSON. Well, you may have, but I did not.

Ms. COHEN. To go on, there are problems with the contributions as well. Now, we understand that the present thinking of the members of the committee is to require organizational contributions to be reported above a certain limit of donation.

But our problem is that we do not quite believe that a zealous inspector will not want to see the entire income list, the membership list. In other words, to see if we have fully complied.

Now, maybe that is cynicism, but I think it is borne out by hard experience, that investigators are pretty hardnosed. And we would like to release ourselves from the obligation of having to object in court, to having to give up our membership lists so——

Mr. DANIELSON. On the list of contributors, suppose we put a threshold dollar amount in there?

I would imagine on most of the public interest groups a fairly substantial sum would—as a threshold—would eliminate nearly anybody——

Ms. COHEN. Well, I do not like to speculate on behalf of other groups, my own group included, as a matter of fact, since I am not the comptroller for the organization.

But I do think that this is a problem where the—and inspection might require the disclosure of the entire income list, not just from the groups.

Mr. DANIELSON. We will keep that in mind. Go ahead. Thank you.

Ms. COHEN. Then the last point that I would like to suggest is that we often convene or join up with ad hoc organizations like coalitions. When we do, if we are the convenors, as an organization we give the appearance—under this kind of legislation like H.R. 1979—that we are responsible for the lobbying of the member organization, that is, we certainly do meet with them. We certainly do have various activities, join together in this issue, whatever it might be.

And we would have the—at least the outward appearance of being responsible for the reporting of the other organizations. And we would like to be that.

It would be wise, I think, to just simply not have any reporting on any behalf of any coalitions. If there be reporting, it would be by members of the coalition. That is, by the separate organizations for their own activities.

Mr. DANIELSON. Do you feel that they were included in the affiliate designation we have in the bill?

Ms. COHEN. Yes, by a strict reading. We have to be rather rigid in our reading of the legislation. We do not see outlaws. We do not see—exempt them. We do not see a way to exempt them.

Mr. DANIELSON. I get your point on that.

Ms. COHEN. Well, Mr. Chairman, these are the main points. Our hope is that we can continue to increase citizen participation. That has been our goal for the last many, many years, we have been successful in many ways, and would not like to see that cut off.

Mr. DANIELSON. Do you mind if we hear from everyone, and then we can sort of question en banc?

Mr. KINDNESS. I think that is a desirable suggestion.

Mr. DANIELSON. Call your next witness.

Ms. COHEN. Mr. Kevin O'Donnell, Assistant Director, National Commission on Law Enforcement and Social Justice.

Mr. DANIELSON. Mr. O'Donnell.

Mr. O'DONNELL. Mr. Chairman, basically what we first endeavored to do, as far as our group's involvement with the lobby disclosure issue, was to find out what the effects of this legislation would have upon privacy, and also what the actual impact and purpose of the bill was.

In other words, when the bill was originally introduced, what was the purpose? What was it trying to achieve?

And we have looked into that area. We have had a lot of difficulty finding out how an encompassing lobby disclosure bill will benefit, you know, a lot of public interests groups and a lot of groups who are interested in petitioning Congress, that compared with the serious infringements of freedom of speech and freedom of associations, and the right to petition the Government, also an added expense to many organizations that are involved with petitioning Congress, we kind of feel that it has not made a case, as far as what the specific purpose of the bill is.

I would like to go through specifically some of the areas that we are concerned about, and the first thing would be, as far as lobby solicitations, we feel that the threat of monitoring a group's or

individual's communication among itself and to the U.S. Congress would result in disaffecting individuals who would be interested in participating, say, in a group.

And we feel that the problem becomes particularly acute with the lobbying solicitations provisions, which we are concerned might be added into the bill at some future date.

But we also note that the monitoring would be a necessity for a group to insure the disclosure of all their literature and private communications. Soliciting help on different issues would have to be available for reporting to the comptroller general.

The implementation of the lobbying solicitations provisions, in no way that we have been able to locate, corrects any abuse.

I would just like to say our main concern—and we have discussed this with some aides of different Congressmen involved with the issue—is that we have had difficulty in defining a purpose for the bill that would necessitate having to encompass all of the groups. In other words, the threshold of $25—if you had two individuals who were working for some—a blind organization, that were trying to get better jobs for the disabled, if they spent, if they were getting paid $250 a week and they spent $100 worth of their time on lobbying Congress, they would go over the threshold at $2,500. They would go over the threshold in a 4-month period of time.

And I think that is our main concern, is why—it is fair to ask why is it that smaller organizations are going to be affected by the burdensome regulations that are inherent in the bill?

I am not saying specifically H.R. 81, but last year is an experience where once it got to the floor a lot of amendments were added into the bill.

And it is our feeling that if the committee really looked at defining the purpose—in other words, if the purpose is to correct abuses of massive lobbying, where hundreds of thousands, maybe millions of dollars are spent towards affecting major pieces of legislation, if that is the particular area that is being addressed, then that would have a specific purpose. And it would—it would not contain a lot of other groups involved.

In other words, you have church groups and you have educational groups, and you have other groups who are saying that we should not be part of this particular bill. But it is not necessarily whether they should be part or not. It is what the threshold is, what the area——

Mr. DANIELSON. I think you have made your point. You feel the threshold is too low, the monetary threshold, at least, would be too low.

Mr. O'DONNELL. That is one of the points. But I wanted to clarify it with the committee, because I do not know. Maybe you could answer my question as to the specific purpose of the bill. I realize——

Mr. DANIELSON. We are asking lots of people that, and in fact we have had 8 or 10 witnesses who have told us what they feel the need for the bill is. And I am not going to recapitulate them. But I have asked them to testify, and a number of them have.

I am not making a committment that they have convinced us or have not convinced us, but I will tell you that a number of witnesses have testified as to why they feel the bill is necessary.

Mr. O'DONNELL. Is there a committee view on why the bill is necessary?

Mr. DANIELS. Well, we do not make a view until we act as a body, and that is in what we call markup. And then we will find out.

I do not know what it is myself. Well, you know markups—I will give you a copy of what we mark up.

Mr. O'Donnell, I think that the whole point is that——

Mr. DANIELSON. Sir, we will bear your concern in mind. We appreciate your stating it. I am not making fun of your presentation. You make some very good points.

I think your most selling point so far is that we ought to be very careful on the threshold limit. You know, two people drawing an aggregate of $2,500 in a quarter is not an awful lot of money. It was in one stage of my life, but $2,500 is not that much money anymore.

I appreciate your point, and you have made it, really. But, go ahead.

Mr. O'DONNELL. OK. I have one more thing to say, basically, that is, from the proponents and Common Cause and the different testimony that we have read on the purpose of the bill, it has involved major abuses, loss of money, and massive lobbying and the public's right to know.

All we are asking is that the subcommittee look at the purpose of how much the public has a right to know, and if it deals with the basic abuses in that particular area—and then I am sure that a lot of the other provisions that are causing such controversy in the bill could be much more easily aligned. In other words, if the threshold was higher, I am sure you would have a lot less problems with the bill, with a lot of groups. And we were just hoping that the purpose will be stated, and then the policy can be written.

Mr. DANIELSON. I make one commitment to you: We will recapitulate what people feel the purposes are, and then you will have sort of a rosary you can go over and figure out.

Thank you very much.

Mr. O'DONNELL. Thank you.

Mr. DANIELSON. Who is next?

Ms. COHEN. Mr. Michael K. Beard, executive director, National Coalition to Ban Handguns.

Mr. Danielson, I am absolutely delighted to have the pro- and the antigun people sitting so close together, and both smiling.

Mr. BEARD. Yesterday it was Sadat and Begin, and today it is the NRA and Gun Control Organizations.

Mr. Chairman, my name is Michael K. Beard. I am the Executive Director—and a registered lobbyist—for the National Coalition to Ban Handguns. And we appreciate the opportunity to present the views of our coalition on lobby disclosure legislation.

As someone suggested earlier, we fear that what is going to happen as you are casting the net for sharks, what you are going to do is catch the dolphin.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, sir.

Who is next?

Ms. COHEN. We have Mr. Randal Bowman, Federal liaison, National Rifle Association.

Mr. BOWMAN. Thank you, Mr. Chairman. We appreciate the opportunity to be here today.

In the interest of saving time, I will also say that we associate ourselves with the views of the coalition and the American Civil Liberties Union's statement, and although we would not be covered by any of the contributor disclosures that have presently been put forward, I would like to associate with the remarks of Mr. Beard, in principle.

Once you get started on this, as I believe Ms. Cohen has said, there is bound to be an over zealous inspector somewhere who is going to want to go through all of your lists to make sure that you have not failed to disclose someone who has perhaps given you an amount that would be over the threshold. And we see no valid purpose for ever getting started on it.

Our primary concern is the lobbying solicitation provisions contained in H.R. 1979.

[The complete statement follows:]

STATEMENT BY RANDAL BOWMAN

Mr. Chairman, my name is Randal Bowman. I am a Lobbyist for the National Rifle Association. We greatly appreciate this opportunity to comment on the lobby disclosure legislation before the Subcommittee.

The National Rifle Association is strongly opposed to any coverage of lobbying solicitations or disclosure of contributors in the proposed reform legislation. The harm such provisions would cause far outweighs the hypothetical benefits disclosure of the information might provide.

The American Civil Liberties Union has already analyzed the Constitutional problems inherent in either proposal. There is no point in repeating those arguments here.

I would simply point out that the effectiveness of grass-roots lobbying techniques comes not from the act of solicitation, or the message given to the citizens reached by the solicitation, but rather from their willingness to respond. Organizations can send messages forever, but unless the recipients are concerned enough to respond, it accomplishes nothing. Lobbying solicitations are in effect a specialized form of the news media, providing information to concerned citizens that they would not otherwise receive.

We cannot conceive any difference between a citizen being prompted to write his Congressman by an editorial in the local newspaper, or by a message from an organization to which he belongs. In the past few years, the public has perhaps been better informed than ever due to the extensive use of grass-roots lobbying techniques. Yet rather than welcoming such extensive public comment on legislative matters, we see attempts in the Congress to restrict such constituent knowledge by regulating the information they receive. Congress should be encouraging greater public participation, not engaging in extensive attempts to choke it off.

Our problems with coverage of grass-roots lobbying extend beyond the theoretical, however. It would be extremely difficult and time-consuming for us to comply with the type of reporting requirements being discussed, regardless of the threshold levels.

The simple fact is that we are never able to determine how many persons would be reached by any solicitation we might send. A typical NRA mailing goes to a group of known activists. They in turn contact others—local rod and gun clubs, sportsmen's federations, individual citizens. If the issue in questions strikes a responsive chord in any of the initial recipients, and if he is not busy on his personal or business matters, he will probably contact a great many people. On the other hand, he may well be uninterested in that particular issue, disagree with us outright, or be busy, in which case few persons will be contacted. The same variables apply to each recipient.

We would be in a position of potential non-compliance on every mailing which did not of itself cross the threshold. We would probably have to report on every mailing as a precaution. Each year we send many different mailings dealing with federal legislation. In addition, we publish a legislative newspaper every two weeks, which is primarily devoted to federal legislation. A report would ave to be filed for every issue, presumably dealing with each story in each issue. Our quarterly reports would resemble encyclopedia volumes.

We are frankly unable to see any purpose for reporting on grass-roots activiies. Our operations are no secret. There are few, if any, Members of Congress who cannot determine when the NRA is involved in a particular legislative activity. Even if we do not contact you directly, there are always some of our members who send in the message they receive from us rather than writing their own letter. Similarly, when you receive a postcard prepared by one of the other pro-gun organizations, it is immediately apparent that a solicitation has occured. If you desire to know which of the two groups that use postcards are responsible for themailing, a few telephone calls will uncover the information. The press can obtain information in a similar fashion. If a Member, or another lobbying organization, believes it is important to the outcome of a vote to know who is lobbying, pouring through voluminous reports filed three months after the fact will hardly provide useful or timely information.

We are equally opposed to the disclosure of contributors to any lobbying organization. Given the emotional nature of so many of the questions before the Congress, harrassment of disclosed contributors would be a virtual certainty. The question of the level of disclosure is not important, since it is the nature of all such requirements that they expand as time goes on. It does not appear that we would be affected by any of the specific proposals offered at this time, but we believe the principle is of sufficient importance to oppose disclosure regardless of this fact.

I would like to emphasize that point—contrary to popular belief, NRA does not receive contributions from firearms manufacturers, or any businesses. The only contributions we receive from other than individuals would be an occasional small amount representing the profits from a rod-and-gun club social function.

We have one concern that is purely technical in nature. We have no objection to disclosing the salaries and expenses of those employees who actually lobby; we do so now. However, there have been suggestions that the reporting requirement for persons who "prepare, draft, make, or assist in making lobbying communications" may be expanded to include not only actual lobbyists, but those involved in "assisting" through typing, printing, delivering, or commenting upon lobbying communications.

It would be impossible to comply with such a requirement without logging the time of all employees who might ever become tangentially involved in such activities. Such persons are not by any stretch of the imagination "lobbyists." The recordkeeping burden for such a requirement would nearly paralyze an organization with resources as extensive as ours; no smaller group could hope to comply. It is essential that the legislation clearly spell out exactly who is covered, and that that coverage be limited to lobbyists. To do otherwise would generate enormous burdens without accomplishing any useful purpose.

We are also extremely concerned over the Department of Justice's proposal for civil investigative demands as a means of obtaining access to an organization's records. The potential for harrassment of groups in opposition to any given Administration is enormous.

There are still a number of Members of both the Subcommittee and the full Committee who served during the impeachment inquiry. We trust you will recall what was uncovered then with regard to harrassment of unpopular organizations, and will give this proposal a prompt legislative burial.

I would conclude by pointing out that NRA complies fully with the existing disclosure law; we even register officers who do little, if any, lobbying so as to avoid any appearance of non-compliance. We accordingly do not feel any need to advocate new legislation. However, if such legislation is to be enacted, we feel it is incumbent upon the Congress to construct a bill that will not cause undue compliance problems. Adding coverage of grass-roots lobbying and contributor disclosure would be completely incompatable with such a goal.

Mr. BOWMAN. Thank you, Mr. Chairman. That is all I have to say.

Mr. DANIELSON. Thank you, sir.

Ms. Cohen?

Ms. COHEN. Our last witness is Ms. Carol Werner, legislative director, National Abortion Rights Action League.

Ms. WERNER. Mr. Chairman, I am a registered lobbyist.

As this subcommittee and the Congress once again proceed into the complex area of regulating lobbying, my organization, the National Abortion Rights Action League, feels it important to place some of our concerns before you. NARAL is a national public interest membership organization with affiliate organizations in most States. Numerous new groups are in the process of formation, and, obviously, most of our local groups are run by individuals who are volunteering their time because of their interest and concern in the issues addressed by our organization. NARAL's local affiliates are autonomous in nature. Therefore, we are greatly concerned about any proposed legislation which could place exceedingly burdensome conditions upon our affiliates, their relationship to the national organization, as well as upon NARAL itself. We know that many other public interest organizations share fears similar to ours.

We recognize that the 1946 lobbying act has been ineffective and unenforceable. However, there is a serious question as to what is necessary and for what purpose information is required. Yes, it would be very interesting to know the scope and means of some organizations' activities and to know who or what are the primary forces behind them, but this interest does not justify trampling on or severely constraining—either in actuality or through intimidation—our constitutional rights of freedom of speech and the right to petition the government.

Perhaps the approach to lobbying disclosure is just backwards of what it should be. The approach has been on of working from legislation orginally proposed to provide extremely detailed information on all aspects of all lobbying operations. Because of various onerous implications concerning abridgement of first amendment rights, efforts have been made to modify proposed bills to lessen conflicts with our constitutionally guaranteed right to petition the Government. Would it not be more appropriate to start from the beginning: is lobbying disclosure/regulation necessary? Why? And, if so, what is the absolutely minimal amount and kind of information required? What purpose would access to the information meet and how would it be used? Could that information be used in a vindictive, harassing way? If so, is it really needed and what safeguards should be in place to insure there would be fair enforcement?

It is doubtful that knowing how much is spent on lobbying is going to greatly change the way Government or large organizations operate. It is also doubtful that disclosure legislation would prevent illegal influence—that would simply not be reported at all. There are already laws concerning bribery and conflict of interest situations. The onus of the purported lobbying abuse issue should rest with the ethics of the one being lobbied.

Indeed, it should be in the interest of a democratic form of government to encourage the participation of the citizenry, the expression of a broad divergence of views from a wide spectrum of the people rather than to impose reins on that expression. Laws which impose fiscal constraints through their administrative re-

quirements do impose certain constraints on the right to petition the Government. We would question the motivation of those urging enactment who seek good government, perhaps at the cost of good government—and the ability of many to exercise fully their constitutional right of petition. Certainly, in this era of great public concern about increased Government involvement and regulation in our lives, we should be particularly alert to unnecessary and, thus, harmful encroachment upon this basic first amendment right. This is a line of exceedingly delicate balance.

In all of the disclosure bills before the subcommittee, there are problems presented in this area. Although generally, H.R. 81 and H.R. 2302 have attempted to strike a constitutional balance. For example, in H.R. 81 the threshold level of $2,500 per quarter for lobbying communications and any part of 13 days in a quarter being spent by an employee on lobbying communications may well prove too burdensome for many smaller groups, such as our local affiliates. This would be particularly true if in one quarter, there was a large amount of legislative activity on several bills of concern to an organization, and included in the threshold were all the overhead costs—phone, rent, office equipment, printing, postage, etcetera—in addition to the preparation time cost of the person's making lobbying communications. The small group may be forced to register. In subsequent quarters, there may be significantly reduced or no legislative activity of concern, yet this organization would be required to keep records to document to the Comptroller General their statement that they did not engage in activities described in section 3(a). This could indeed prove so burdensome, if not impossible to handle, that such groups may simply be discouraged and feel it's just not worth it to participate in the lobbying process.

We would, therefore, support the recommendation of the Justice Department to exclude from the threshold determination general overhead expense; we also would suggest that the time spent in preparation of lobbying communications be excluded. First of all, there are many cases where it would not be possible to determine if a factsheet, for example, was initially prepared as a lobbying communication. Furthermore, in lobbying disclosure, the primary interest should be in the verbal—direct—lobbying contact with the legislator.

We would also support the exclusion from lobbying communication made in H.R. 2302, sections 2(6) (C) and (D). These would exempt from lobbying disclosure communications dealing only with the status of an issue and organizational communications with members of the congressional delegation in which such organization has its principal place of business. This would be especially important to groups like our affiliates which rely heavily upon volunteers and possess, therefore, neither the budget or the staff to handle elaborate reporting requirements.

We are also concerned about the potentially burdensome reporting of total expenditures described in H.R. 81, section 2(6)(A)(ii) and section 6(B)(5)(A). In both cases of costs attributable partly to lobbying communications and salaries of those making such communications, there must be an allocation of lobbying versus nonlobbying costs in a manner acceptable to the Comptroller General. However,

what may seem reasonable and fair to GAO may be impossible to accomplish for groups such as NARAL and our affiliates. We would suggest that allocation of salaries for lobbying purposes be done relative to only those employees whose regular duties include lobbying. To require the logging of all staff activities to insure allocation of salary for lobbying purposes even for someone who made seven phone calls in a quarter is impossibly burdensome. The tremendous amount of time involved in such logging activities and in maintaining such detailed records of costs would require the employment of additional staff to develop and maintain the record systems and to do the work not accomplished because of time loss by employees in activity logging. Obviously, NARAL does not have the budget nor the staff resources to handle such detail. Nor should such detail be necessary to provide adequate disclosure.

As set forth in the bill, volunteers should clearly be exempt from such registration and recordkeeping. We are concerned that in the case of local organizations which are staffed primarily by volunteers that the threshold be set high enough to not require registration. All in all, we suspect that many groups locally may be so intimidated at the prospect of possibly having to register, or being investigated or audited, and knowing that there are criminal sanctions involved may simply decline to participate in the legislative process. The effort spearheaded by Common Cause to go after the special interests may well eliminate small er public interest organizations and leave only the special interests.

Even though the bills before the subcommittee provide only for disclosure of organizations that contribute $3,000 or more to a lobbying organization, we wish to emphasize our opposition to any disclosure of individual donors. Many others have made the point very well of the potential harassment of donors to controversial causes and the violation of the indivdiual donor's constitutional rights.

It is unclear what a description—section 6(b)(6)—of issues on which an organization spent a significant amount of time would constitute. This again is left to the discretion of the Comptroller General. A simple listing of bills or issues upon which an organization worked would suffice. Other requirements could prove burdensome and unjustifiable if they involved time allocations or discussion of positions, strategy, or tactics.

We believe that H.R. 81 and H.R. 2302 take the correct position in their deletion of last year's House position requiring disclosure of lobbying solicitations. Not only do we find the requirement of such disclosure in H.R. 79, section 6(b)(7) inappropriate and constitutionally suspect but also probably impossible to comply with physically. It would seem that the purpose of lobbying reform should be in regard to lobbying the commonly accepted sense, that is, direct communication with Members of Congress on their staffs relative to legislative matters. This is undoubtedly the most stifling part of the proposals before us. Organizations which communicate with their members about legislative matters are helping to inform the public and encouraging citizen participation in government. To regulate lobbying solicitation erodes the free exercise of the right of all citizens to petition the Government. Regulations proposed in H.R. 1979 could seriously affect fundraising and membership

drives, whether through direct mail, canvassing, or other methods. This is a clear case where the advocacy of ideas and opinions is regulated—and we would suggest that that is not where lobbying abuse occurs.

Such detailed reporting requirements of soliciations would prove so time-consuming, so intimidating, and so difficult with which to comply that there would be a chilling effect upon many public interest efforts to arouse public support. It would be virtually impossible for an organization such as NARAL to track the ripple effect of a solicitation to our volunteer, activist membership. The cost would undoubtedly mount into the thousands, for detailed records and sophisticated tracking would be required of virtually every communication by memorandum or phone call to our affiliates, to our national membership, or to other individuals since they all have the potential of reaching the number required for reporting.

Since these are activist members of a public interest organization as opposed to the membership of a more closed, structured professional organization, there is no way to really ever know with any great accuracy or certainty just how many persons a solicitation would reach and, therefore, what kind of cost should be attached to it. Because our affiliates are essentially autonomous in nature, we have no actual control over how they may proceed upon receipt of a solicitation. We would have to request of essentially volunteer organizations that they keep comprehensive records relative to mailings, telephone trees, etc. They may be unable to comply or simply may not comply. We, in turn, might then be faced with a total reorganization of our relationships with our affiliates if we are to comply with disclosure, incomplete disclosure—and the threat of sanctions—or the cessation of grassroots lobbying efforts. Storage of all such records for 5 years would become a monstrous, costly, and pointless task. The net effect would be to shut out the efforts of many public interest organizations. Many organizations would find themselves threatened with criminal sanctions because their reporting efforts were not sufficient to satisfy the Comptroller General. Surely this is not to the benefit of the Government or the citizenry.

We oppose use of criminal sanctions. Simply the knowledge that they exist in the bill would probably be sufficient to scare off many groups from any lobbying and taking any chances. The first amendment should encourage participation in the legislative process. Violators of a reporting requirement relative to the petitioning of their government should not find themselves imprisoned for exercising their constitutional rights. We support the sanctions provision of H.R. 2302 which provides only civil penalties. We strongly urge the use of informal methods of reaching compliance on alleged violations. The threat of litigation again throws a heavy pall upon the desire of many to lobby. It is a matter of concern that proposed legislation would allow in certain cases the Attorney General to not notify the alleged violator of an alleged violation before taking action. We support the position put forth by the ACLU in their testimony before this subcommittee concerning the appropriate methods of resolving disputes and taking action against violators.

We hope that the questions raised throughout this testimony will be carefully weighed against the content of the various bills before this subcommittee. Lobbying disclosure legislation and its subsequent regulations could well produce an entirely new kind of domestic surveillance. For many, disclosure legislation of a stringent nature could make lobbying, our right to petition the Government, appear to be very hard to do legally. Such appearances, even if exaggerated, are not conducive to healthy, open government and are not encouragement to speak out on issues. Therefore, the Congress has the obligation to carefully scrutinize any infringement of the right of their constituency to petition them—a right which the Congress is sworn to uphold. If a bill is reported, we hope that it is sufficiently sensitive to working out this delicate balance so that we can support it.

STATEMENT OF KEVIN M. O'DONNELL, ASSOCIATE DIRECTOR NATIONAL COMMISSION ON LAW ENFORCEMENT AND SOCIAL JUSTICE

The National Commission on Law Enforcement and Social Justice appreciates the opportunity to present its' views on federal government regulation of lobbying. Our concerns over federal regulation of lobbying are in agreement with many of the groups represented here today.

As we have been involved in privacy issues for years, the existence of possible wholesale infringements upon the rights of private groups and individuals in last year's House bill as amended, H.R. 8494, resulted in bringing the matter to our attention. Our first attempts at understanding the lobby regulation bill dealt specifically with its' impact and purpose. In other words, what are the abuses the bill is attempting to correct?

We have endeavored to sort out the possible good effects this bill, if enacted, would have upon the public and the damaging effects it might possibly have, to determine for ourselves, what future effects upon privacy lobby regulation could have. We have, to date, found no factual evidence of serious abuse that would warrant enactment of a strict, all encompassing lobby disclosure bill. There are no abuses factually delineated by proponents of this legislation that clearly state a case for implementing a bill which is to many a serious infringement upon freedom of speech, freedom of association, a form of redress to elected representatives and an added expense to any and all organizations that would come under the umbrella of this extensive regulation of their activities.

At this point I should like to deal specifically with our concerns relating to lobby regulation.

First of all, we feel that the real threat of monitoring a group's or an individual's communication among itself and to the Congress of the United States will result in disaffecting many individuals who otherwise might be interested in participating in the democratic process of expressing their views. This problem becomes particularly acute in the area known as "lobbying solicitations". Under this provision a group would have to monitor the activities of its' own members, a distasteful measure particularly for a group whose purpose involves the protection of privacy. However, monitoring would be a necessity for a group to ensure that disclosure of all literature and private communications soliciting help on certain issues would be available for reporting to the Comptroller General. The implementation of a "lobbying solicitations" provision in no way corrects any documented abuse that is crucial to the legislative process.

Another area of concern is the enforcement provision of H.R. 81. Possible criminal punishment for a constitutionally protected right could drastically reduce public participation in the legislative process. The investigative authority delegated to the Department of Justice could result in harassing investigations of groups engaged in lobbying on legislation counter to a position held by the Department of Justice or a federal agency interested in a particular piece of legislation. For example, if a bill was proposed regulating the sale of vitamins which was opposed by a coalition of health store owners and during the flurry of lobbying on the issue the health food store owners involved were alleged to have failed to comply with the lobby regulation provisions and the Food and Drug Administration brought this allegation to the attention of the Attorney General, the Attorney General would then have the power per H.R. 81 to bring the entire justice system down upon the alleged violators. The

threat of possible investigation alone could effectively stifle citizen participation in groups espousing legitimate social causes.

FEDERAL LOBBYING

Another problem that arises under H.R. 81 seems to be the exemption of one of the biggest lobbyists: federal agencies. Governmental agencies employ many full time staff to promote certain pieces of legislation which they feel are necessary for their own particular agency. A great percentage of lobbying is done in this manner; however under all the proposed lobby bills the inclusion of the expenditures, resources and contacts continuously made by the various agencies does not exist.

Under the provisions so far introduced on public disclosure this is an omitted aspect which comprises a large percentage of direct contact influence upon the legislator. That these activities occur is well known but the influences brought to bear in order to obtain a vote are not. If any and all organizations meeting a certain threshold are required to describe in detail how and what they did to try to affect certain legislation then the government's actions and the agencies' use of taxpayer money along these lines should be duly recorded and reported also. This would result in open government which is, after all, one of the main goals of a disclosure bill.

CONCLUSION

Finally, we feel that many of these problems can be resolved by defining the actual purpose of lobby regulation.

Common Cause has defined the need as "the public has the right to know of the significant, organized, outside pressures exerted on government decision making . . ."

Main proponents of the bill have continuously cited the massive lobbying campaigns and significant expenditures directed from large corporations designed to affect some economically based piece of legislation. Proponents of lobby regulation in these cases have speculated on the tremendous amount of influence upon the legislation these kind of activities can have.

This then has resulted in a compelling governmental interest.

Why then, it is fair to ask, would a lobby bill contain a threshold so low that almost every lobbying group in the country would easily trigger the thresholds thus far proposed.

If the purpose of the bill is to ensure that the public knows what large expenditures are going toward influencing legislation why then will H.R. 81 result in mainly burdening smaller groups who have done no wrongdoing and should not be the focus of a regulating bill that will adversely affect their right to petition Congress.

We feel that the answer would lie in really defining the purposeo lobby bill should be designed to achieve.

If massive lobbying and spending is the real problem then a significantly higher threshold would handle that problem without being an overwhelming burden to smaller groups who would not trigger the threshold. Also the special interests affected by the bill would have little difficulty in maintaining an adequate staff and records to conform to the regulations.

We would urge that this subcommittee seriously look at what is really needed in a lobby regulation bill. We feel this is very important as the purpose for enactment of the legislation is somewhat vague and the principle that the public has the right to know needs to be defined as to what they need to know. A purpose for this bill and its reasons for enactment would substantially clear this matter up for all concerned.

STATEMENT OF JOEL T. THOMAS, COUNSEL NATIONAL WILDLIFE FEDERATION

The National Wildlife Federation appreciates the opportunity to present its views on the various proposals now before this subcommittee to enact some form of federal lobbying disclosure law. The Federation is concerned about the enactment of a federal lobbying disclosure law because it believes that such a law could substantially impair the ability of the American people to participate in the federal legislative process.

Before addressing the specific problems which a federal lobbying disclosure law would pose, I would, however, like to say a word about the absence of proof of a need for such legislation. So far as the Federation can determine no one has ever established the existence of a problem. Since a federal lobbying disclosure law, will, of necessity, infringe on exercise of essential First Amendment rights, there must be (1) a compelling governmental interest in such a law and (2) a substantial correlation between the compelling governmental interest and the information which the

law would cause to be disclosed. Finally, any law which infringes on protected First Amendment rights must obtain the information it requires by the least drastic means possible.

So far the only interest which has been cited in support of a federal lobbying disclosure law is "the public right to know"—i.e., public curiosity about how much time and effort some organization is spending exercising its constitutional right or the rights of its members to speak and petition their government for the redress of their grievances. Curiosity about how someone else is exercising his constitutional rights does not rise to the dignity of a compelling governmental interest. In short, that the satisfaction of curiosity is not enough—a real problem must be demonstrated. Without this missing predicate no federal lobbying disclosure law can expect to be upheld. In view of this, it seems to the Federation that the first priority of the proponents of a federal lobbying disclosure law should be proof of the existence of a problem. The second priority should be establishing that the problem can best be solved by the enactment of a federal lobbying disclosure act should receive no further consideration.

The Federation's objection to consideration of a federal lobbying disclosure law in the absence of the proof of some problem is not mere obstructionism. Until we know what the problem is we cannot determine—and we don't think anyone else can—whether any specific proposal would solve the problem.

While we cannot determine what the benefits of a federal lobbying disclosure bill are, we can at least examine some of the costs. These will include the expenditure of enormous sums of money by both the G.A.O. and the organizations required to register and the loss of citizen involvement as a result of fear, misunderstanding and the lack of resources needed to understand, much less comply with, the provisions of a complicated lobbying disclosure law.

The Federation's principal concerns with H.R. 81, 1979 and 2497 relate to: (1) the threshold—it's too low; (2) keeping lobbying "solicitations", contributor disclosure, and executive branch "lobbying" out of any federal lobbying disclosure law; and (3) reducing the special burden which a federal lobbying disclosure law would impose on certain public charities.

I. THRESHOLD

The Federation firmly believes that the threshold should be set high enough so that only organizations which have a continuing, substantial involvement in the federal legislative process are covered. Unfortunately, there is a substantial disagreement over what constitutes a continuing, substantial involvement in the federal legislative process. In the Federation's opinion, an organization which has fewer than one paid employee who spends at least twenty percent of his or her time lobbying and spends less than $25,000 per year lobbying is simply not seriously engaged in lobbying, does not have a continuing, substantial interest in lobbying and has no reasonable expectation of materially affecting the outcome of important, controversial legislation. Such organizations should not be covered by a federal lobbying disclosure law.

The counting of "contacts", a supposedly "objective" test, is, in the Federation's opinion, simplistic and misleading. Reliance on such a mechanical test ignores the problem of determining the "content" of a communication in order to determine whether it is a "lobbying communication". It could also result in organizations with a very small lobbying effort being required to register while other organizations with much larger, but still small and insignificant lobbying programs not being required to register. The use of "contacts" also ignores the Committee structure under which the Congress operates, especially since contacts with home state Senators or home county Representatives are excluded, and the fortuity of whether an organization may be able to spread its lobbying effort over two quarterly periods instead of just one. Under H.R. 81, 1979 and 2497 a small organization which writes fourteen letters, one to each member of a Congressional committee and encloses a study of a problem which it paid a consultant $2,750 for, would have to register and report while another organization which, during the course of a year, sent hundreds of letters to its home state Senator and home county Representatives, 48 letters to various committee chairmen and spent $9,000 for consultants to do analysis would not have to register at all.

II. ELIMINATED REQUIREMENTS

The Federation is pleased by the elimination from H.R. 81, the prime proposal under consideration, of: (1) lobbying solicitations; (2) contributor disclosure, and (3) executive branch "lobbying" except when it is intended to influence their position on legislative matters.

The elimination of these items from H.R. 81 will substantially lessen the burdens of a federal lobbying disclosure law. Conversely, their inclusion, or reinstatement would, if the bill were enacted, have, we believe, a crippling effect on any citizens organization with any detectable involvement in the legislative process. What concerns the Federation now is that these onerous requirements will be reinstated on the floor by members who have not had the opportunity the members of this subcommittee or the full Committee have had to consider the impact which their insertion would have.

III. SPECIAL PROBLEMS OF PUBLIC CHARITIES

The elimination of "solicitations", contributor disclosure and executive branch "lobbying" does not, however, eliminate all of the problems or the burdens, especially for charities. As you know, the Internal Revenue Code was amended in 1976 to permit certain charities (publicly supported charities, not affiliated with a religious organization) to elect to be treated under certain new provisions of the Code. These new provisions limit the amount of lobbying which electing charities can engage in and require them to report the amount they send, doing so annually.

Because the definition of lobbying in the Internal Revenue Code differs significantly from the definition of "lobbying communication" in H.R. 81, charities which lobby will have to keep two sets of records. Each "communication" between an employee of an electing charity and a "federal officer or employee" will have to be reviewed, characterized and recorded and reported twice in order to insure compliance with both laws. This process will be very burdensome. The benefits very doubtful. Is it really important for the National Wildlife Federation to report within thirty days how much it spent during this quarter lobbying for a non-game species law that would help fund research and management of non-game species of wildlife? Is it essential for the G.A.O. to have on file the amount the mental health association spent "lobbying" for measures designed to help the mentally ill. Wouldn't the money spent reporting have been better spent studying striped bass population dynamics or some mental health problem?

Another reason for exempting charities arises from the fact that unlike other organizations subject to this law, organizations which are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code must, if they lobby at all meet the public support test imposed by § 509(a) of the Code. Private foundations, i.e., non-publicly-supported charities, may not lobby at all. Thus, there is assurance that lobbying by charities will be conducted by organizations responsible to and reasonably representative of a public interest.

The amount a charity can spend lobbying is small. For large organizations like the Federation it is less than five percent of its exempt purpose expenditures. In view of its limited involvement in the legislative process, the existing requirement for public disclosure and the lack of any ascertainable benefit, the Federation believes that 501(c)(3) public charities should not be covered by a federal lobbying disclosure law or should, at the least, be permitted to file the same information for disclosure purposes that they file for tax purposes. In this regard, it should be noted that the similar treatment of dissimilarly situated organizations is not neutral, it is discriminatory.

IV. CRIMINAL SANCTIONS

The National Wildlife Federation strongly believes that criminal sanctions are inappropriate in a lobbying disclosure law. Under the provisions of H.R. 81, 1979 and 2497 a volunteer director who failed to record and report a long-distance telephone call he or she made to a federal officer or employee to influence the content or disposition of a bill as requested by the organization would be guilty of a felony since § 5 requires officers, directors, whether or not they are volunteers, to provide the information necessary to enable the organization to comply with the Act. This is overkill. A forgetful volunteer is not a public enemy deserving prosecution much less being sent to jail for failing to keep track of phone calls.

V. CONCLUSION

In conclusion, let me say that while the Federation does not understand what problem a federal lobbying disclosure law is supposed to address, it believes that H.R. 81 will provide the public with a reasonable amount of information about the federal lobbying activities of various organizations. The information will be costly in terms of dollars and constitutional infringements, but not nearly as crippling as H.R. 1979, 2497 or various other proposals. Finally, for the reasons set out above, the inclusion of criminal penalties and 501(c)(3) public charities makes no sense to the Federation. In view of this, we hope the subcommittee will, if it feels a bill should be reported to the full Committee, report out H.R. 81 with a significantly

increased threshold, no criminal penalties or annual reporting requirement, and an exclusion for public charities.

STATEMENT OF BROCK EVANS, DIRECTOR OF THE WASHINGTON OFFICE SIERRA CLUB ON PUBLIC DISCLOSURE OF LOBBYING

SUMMARY OF ISSUES RAISED

We support HR 81 with amendments recommended by the American Civil Liberties Union.

We oppose:

Disclosure of (a) solicitations, (b) names of contributors, (c) activities of volunteers.

Threshold so low that it traps small, low-budget groups, including affiliates of large organizations, especially those that lobby only infrequently.

Intimidating search and seizure powers and criminal sanctions.

STATEMENT OF BROCK EVANS, DIRECTOR OF THE WASHINGTON OFFICE SIERRA CLUB ON PUBLIC DISCLOSURE OF LOBBYING

Chairman Danielson and members of the committee, I appreciate being invited to testify on behalf of the Sierra Club. With your permission, I will place in the record both this brief statement and a more comprehensive paper that includes several in-depth analyses of the impacts on the Sierra Club which we believe would result from H.R. 1979 and other similar proposals.

With the exception of H.R. 81, if it were amended according to the recommendations of the American Civil Liberties Union, the various versions of this legislation would tend to discourage Sierra Club members from working through the Club to communicate with other citizens, with the Congress and with high federal officials. These are the reasons why:

Volunteers would have to keep records, whether or not they assisted anyone paid by any unit of the Club (section, group, chapter, regional council, field office, headquarters or national committee) if those members worked to organize public support on federal issues or legislation. Details for each separate issue would include expenses, such as printing, postage and telephone/telegram bills; and the number of people reached and by what means. Files of this information would have to be kept for five years, subject to audit, subpoena, criminal fines and jail terms. Even if volunteers agreed to spend their limited time keeping records instead of working on issues, they might feel they were under surveillance for working on controversial issues.

Club units that have the political savvy to contact Congressional committees and not just their local Senators and Members of Congress would make more than 13 lobbying communications in a quarter. This would qualify them as lobbying organizations, activating the requirements for reporting and record keeping.

Lobbying units of the Club would either have to do the reporting themselves, or furnish data to Sierra Club headquarters for reporting. In either case, those units would be responsible for the record keeping, even though most of them do not have permanent office space or full-time staff.

To attempt to meet the reporting requirements, the Club would have to develop a centralized lobbying accounting system, a process for data retrieval and permanent storage facilities for the records. Costs for staff, procedures and data processing would have to be budgeted for all Sierra Club units that lobby or urge others to lobby.

Reporting and record-keeping expenditures could drive up the administrative costs of Sierra Club units to the extent that their expenditures might exceed the ceiling that many states set as a qualification for fund-raising permits. This would effectively deprive those groups of the resources they need to carry out our members' objectives.

Individuals who contribute money to an organization are its members; the Supreme Court has ruled that it is unconstitutional to require disclosure of the membership of private organizations. Political harassment for supporting an unpopular cause and personal importuning by fund-raisers for other causes would be likely results of the publication of contributors' names. The other outcome would be reluctance of would-be donors to contribute in the future. [This is a possible scenario: A corporate executive who disagrees with his company's policy makes a large financial contribution to the Sierra Club chapter that is fighting his company's practices. As long as his name is held private, he can express his political views without fear of reprisal from his employer.) Even if only organizational contributors were covered, there remains the believable possibility that a zealous federal investigator would demand to see the entire membership list to see if full disclosure had been made.

The organizations and their members with which we associate on local and regional issues will be imposed upon in the same ways as the Sierra Club's units and volunteers. They, too, would be faced with the choice of either paying the high costs of compliance or deciding not to participate in the federal issues that relate to their locality.

Frequently, we convene or join ad-hoc associations of organizations and coalitions. The group responsible for administering the new association would appear to be responsible for the lobbying activities of the member organizations, though, in fact, would have no such control. We see this as an open invitation to political harassment.

Sierra Club members have made significant gains over recent years, to increase citizen participation in the earliest stages of federal agency decisionmaking and the Congressional legislative process. The activities of our membership and of other groups that work with us would be vastly limited by the low threshold, by requirements to disclosure any volunteer activities, solicitations, or names of contributors, and by heavy reporting and record-keeping burdens, criminal sanctions and intimidating search and seizure powers.

We urge the Subcommittee to amend H.R. 81 in the manner which the American Civil Liberties Union has recommended, to give support to our belief that the free and full expression of public opinion is the prerequisite for a responsive and effective Federal Government.

STATEMENT OF RHEA L. COHEN, WASHINGTON REPRESENTATIVE, AND BROCK EVANS, DIRECTOR OF THE WASHINGTON OFFICE SIERRA CLUB RELATING TO PUBLIC DISCLOSURE OF LOBBYING

Since its beginnings in 1892 as an association of West Coast hiking enthusiasts, the Sierra Club has become a national voluntary membership organization, of over 182,000 members with the public interest purpose "to restore the quality of the natural environment and to maintain the integrity of its ecosystems." We are engaged in a broad range of environmental issues through a diversity of educational, research, publication, outdoor, legal, and public-policy-influencing programs. Attachment A depicts the highly decentralized structure of the Sierra Club, which is a single corporation organized under Section 501(c)(4) of the Internal Revenue Code (IRC), with two affiliated corporations organized under Section 501(c)(3) of the IRC, which are the Sierra Club Foundation and the Sierra Club Legal Defense Fund.

Compliance with the solicitations disclosure requirements of H.R. 1979 would force the Club to set up costly centralized accounting procedures for the federal lobbying activities of its 330 divisions. Further, meeting such requirements could drive up the administrative costs of Club divisions to the extent that their expenditures might exceed the low ceiling that many states set as a qualification for fundraising permits. This would effectively deprive those divisions of the resources they need to carry out their members' objectives, and would definitely cut back their memberships' effectiveness.

An analysis of the record-keeping burden that solicitations reporting would impose on the Sierra Club is contained in Attachment B. Tracking the "ripple effect" of a request transmitted down through our divisions requesting individuals to lobby would be unjustifiably costly in terms of both financial and human resources. In fact, compliance would be unlikely unless the Club reorganizes totally, because of inability to retrieve accurate cost information and other statistics from our mostly volunteer-run divisions, relating to newsletters, one-time issue alerts, telephone campaigns and other outreach efforts.

Any explicit coverage of volunteers, or even only of principal operating officers, would cause great difficulties for the Sierra Club. Under certain recently enacted laws, the Congressional committees of jurisdiction hold veto power over some federal agencies' proposed new rules and regulations. Agency contracts for timber sales, park concessions, and mining and drilling leases would be subject to such rulemaking, for instance. The Congress has also assumed responsiblity for review of environmental impact statements for the construction of proposed federal facilities under Section 404 of the Clean Water Act (Public Law 95-217). Of course, pending appropriations can impact strongly on public lands and acquisitions, and on other environment-related activities. In these instances and in many others, a large number of the Club's 5,000 or so volunteer leaders and activists take a keen interest in expressing their views to the Congress, and they urge others to do so, as well. To attempt to comply with the reporting provisions of H.R. 1979, we would have to limit that number severely, and try to stop them from soliciting others to lobby. This would place an impossible workload on our employees and would lead to a cutback of exponential proportions in our membership's participation in the federal decision-making process.

This is one example of the "chilling effect" of H.R. 1979 and other legislation on our members Fi'rst Amendment rights of speech and association and to petition their government. A more detailed argument is made in Attachment C, which demonstrates how a good-faith attempt to comply with the lobbying solicitations reporting provision, by being time-consuming, complicated and possibly threatening, could discourage our volunteer members from expressing their viewpoints at all on federal issues.

The American Civil Liberties Union (ACLU) has presented in their testimony for the record of this hearing, a complex analysis of the Constitutional problems which these proposed laws would bring about. We add our voice to theirs in appealing to the Committee to avoid any infringement of the rights guaranteed to all citizens under our participatory democracy. Additionally, we would like to emphasize the matter which ACLU points out concerning the authority for the Comptroller General to exercise enforcement power. We object strenuously to the creation of a new, powerful Public Eye with the potential for witch-hunting and for unjustified invasions of privacy. We agree with ACLU that the Attorney General and not the Comptroller General should be given enforcement responsibility. There should be no criminal penalties and only the most circumscribed search and investigatory powers should be granted. It is outside the proper scope of a law that would in and of itself tread the fine line of Constitutionality, to grant broad authority to the Comptroller General to search an organization's files. This would be an unwarranted incursion into the associations of private citizens, with dangerous potential for the Federal Government to manipulate the opinions which an organization expresses on its members' behalf.

We note the following problems:

Threshold—tests of 13 or 7 days' direct lobbying contacts, and inclusion of preparation and drafting costs, would trap into the disclosure requirements many small, low-budget citizens' groups and also affiliates (some of the Sierra Club's divisions, for instance), which lobby only infrequently and which, lacking the resources needed to comply, would be dissuaded from expressing their members' views to the Federal Government. A better test would be at least 20 percent of a paid person's time spent on lobbying. This would set the level high enough so that only those organizations that lobby at least one day a week on a regular basis with paid lobbyists would be required to comply.

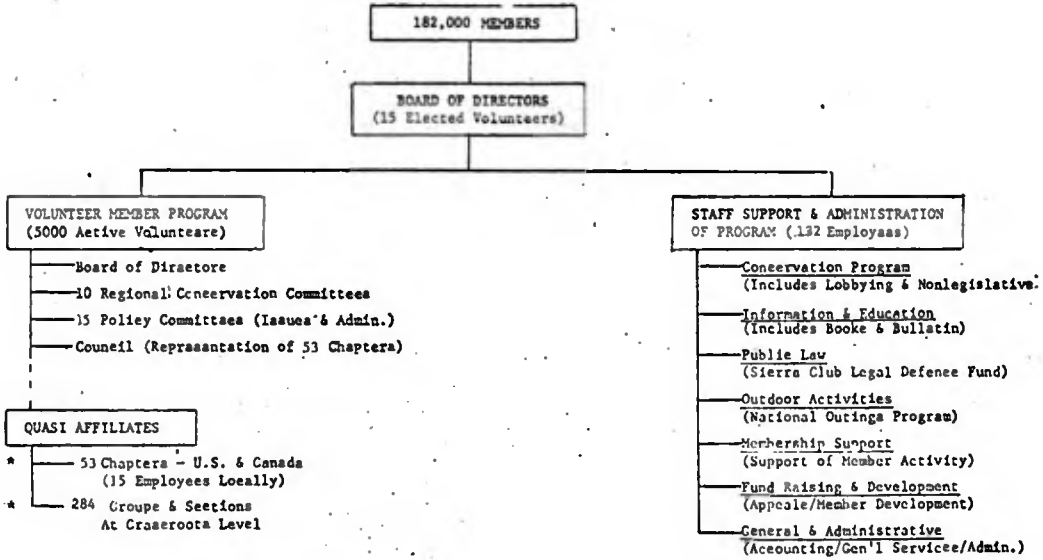
Contributor disclosure—the names of contributors to an organization are the names of members; it is unconstitutional to require the disclosure of the membership of private organizations. Privacy is a major issue. Political harassment for supporting an unpopular cause and personal importuning by fundraisers of other causes would be the obvious unwelcome outcomes of the publication of contributors' names. Another result would be the reluctance of would-be donors to contribute in the future, leading to a decline in the funds available to an organization to carry out its members' programs. [This is a possible scenario: a corporate executive who disagrees with his company's policy makes a large financial contribution to the citizens' organization that is fighting his company's practices. As long as his name is held private, he can express his views politically without fear of reprisal from his employer.) Even disclosure of names of groups that make contributions to a lobbying organization could result in an investigation of the entire member list.

We urge the Congress to undertake a careful examination of the conflicting trends in new and proposed federal and state legislation to regulate the nonprofit sector, as shown in Attachments D and E. A multiplicity of cumbersome and inhibiting requirements will have the effect of preventing such organizations from participating fully, if not at all, in their government. Many non-profit groups will be unintentionally out of compliance and will lack the resources for complying with the complex of legislative remedies designed for abuses in lobbying, fundraising, the use of the postal system, philanthropy, accounting and tax law. This could have the ultimate financial and social effect of putting the public interest sector out of business. There is a need to examine these regulatory accounting and reporting requirements on a consolidated basis, to devise a single simple system consistent with existing tax reporting.

We believe that H.R. 1979 takes the wrong approach to regulating lobbying, that the Committee has not documented what lobbying abuses this bill is intended to rectify, and that the real lobbying abuse issue rests with the ethics of those being lobbied, not how much money is spent in participating in the decision-making processes of our government. We urge the Committee to consider whether any of the proposed lobbying disclosure bills would have prevented any of the major Washington scandals of recent years, and whether placing de facto limitations on citizens' First Amendment rights can be defended as a remedy for bribery, graft and other public corruption.

By contrast, for the simple purpose of disclosing the amount of Congressional lobbying taking place legally, H.R. 81 with the amendments recommended by the American Civil Liberties Union, would be the appropriate Constitutionally sound mechanism.

ORGANIZATIONAL STRUCTURE



Chapters & Groups report summary financial information at year end only for purposes of 990 Tax Return - All other Club program is reported centrally monthly - The highest cost of regulatory accounting would be in our Chapters & Groups

Sierra Club is one corporation organized under Section 501(c)(4) of the IRC with two affiliated corporations organized under Section 501(c)(3) of the IRC (Sierra Club Foundation and Sierra Club Legal Defense Fund)

--March 14, 1979

ATTACHMENT A

THE RECORDKEEPING BURDEN: LOBBYING SOLICITATIONS BY "AFFILIATES" UNDER PENDING DISCLOSURE LEGISLATION

(By Eugene Coan, Sierra Club National Issues Director)

The national Sierra Club and all of its 330 divisions ("affiliates") that engage in efforts to influence Congressional or administrative decisions by means of generating public response would have to keep track of each such lobbying solicitatin, including:

(1) The extent of coverage of those federal issues in each medium of communication, including nationwide specialty newsletters, regional as well as all chapter and group one-time issue "alerts," telephone campaigns, and other outreach efforts. Each medium would have to be analyzed in terms of its audience—geographic spread, number of persons.

(2) Each mailing the Club or its affiliates made would have to be itemized, including description of the issue involved, number of persons who received the mailing.

(3) Each telephone call or in-person effort, whether by employees or volunteers, to elicit grass-roots support on federal issues would have to be tallied to determine whether 25 or more officers or directors, or 12 or more "affiliates" had been reached.

(4) Copies of each national, regional, chapter and group written solicitation would have to be filed for five years in the Club's central accounting office to substantiate the reports.

(5) The total expenses involved in each solicitation would have to be logged, from initial appeal through the subsequent "ripple effect" throughout the organization's subgroups, to determine whether the $5,000 minimum reportable level had been reached.

(6) Finally, for each solicitation designed to reach affiliates, there would have to be a breakdown of the affiliates reached and the number of persons reached in each.

A number of recently enacted federal laws provide for Congressional rule and regulation review, before an agency's proposed new regulations can take effect. The Sierra Club's volunteer members watch-dog many federal agencies' contract activities—timber slaes, park concessions, mineral and offshore oil and gas leases—and would take a keen interest in expressing to the Congress their views on new regulations relating to these and other activities. It would be a nearly hopeless effort to keep accurate and complete records of solicitations to contact the Congress and the Executive branch without totally transforming the Club from a spirited grass-roots action base into a highly centralized and probably demoralized organization.

ATTACHMENT C

THE CHILLING EFFECT ON CITIZEN PARTICIPATION IN NATIONAL DECISIONMAKING THAT WOULD RESULT FROM SOLICITATIONS DISCLOSURE REQUIREMENTS

(By Carl Pope, Sierra Club Director of Political Education)

The proposed disclosure of solicitations would inevitably exert a substantial chilling effect upon the volunteer leadership of the Sierra Club. The most drastically affected individuals would be chapter chairmen and chapter conservation chairmen, who are also the key individuals in keeping a healthy grass-roots effort going.

The chapter chairman would be considered the chief officer of an affiliated organization. There are an average of 4 to 6 groups under a chapter, and these groups would also qualify as affiliates. The groups, with rare exceptions, have no paid staffs, but in many cases their active volunteers engage in a sufficient volume of solicitations that their activities would have to be logged.

In most cases, principal responsibility for conservation work lies with the chapter or group conservation chairmen. This means that in addition to paid staff, if any, the chapter chairman would be responsible for ensuring that the solicitation activities of 8 to 12 volunteers—none under actual supervision—be logged: that all telephone calls made from the chapter or group offices (or members' homes, if there is no office) asking members to wire Senate committees, to comment on an environmental impact statement in cases where the Congress under certain laws has assumed responsibility for review, such as for federal facilities construction exempted by Sec. 404 of the Clean Water Act; or to appear at a federal agency hearing on proposed appropriations for wilderness, etc., must be tracked so that the total expended on the solicitation could be reported. Where, as is often the case, the group chairman and conservation chariman conduct independent solicitations of members, and submit telephone bills, those bills would have to be logged, separated into issues for purposes of determining the ten most important.

In some cases, chapters cover two, three, or even four states. The degree of contact between the chapter chairman and the groups is minimal—solicitations to the groups often originate directly from the Washington office or the San Francisco office. The groups and chapter budget books are maintained by volunteers, also not under the direct supervision of the chairman and not normally at nearly the level of sophistication required to comply with the provisions of the Senate bill. Some volunteers who make telephone calls and who later request reimbursement do not do so on a quarterly basis, nor do they keep track of the issues on which they made the calls.

The chapter chairman sees this dilemma: to the extent that he or she would pressure volunteers to keep records of each phone call, force them to break down and allocate the costs of each issue alert publication, and insist that chapter members working with other groups keep track of how many individuals are reached and what costs are involved, two unwanted results could occur. The response by many of the volunteers would be to ignore the reporting requirements, placing the chairman in the position of being unable to comply with the law. Alternatively, many volunteers, already overburdened by their activities, would cease engaging in those federal issues rather than to suffer the bother and sense of legal threat involved in reporting solicitations for Congressional lobbying and for communications to federal agencies under this legislation.

It is conceivable, of course, that some volunteers will continue to put in the same number of hours on federal matters as before, but a significant part, 30 percent to 40 percent, of those hours in the case of the group chairman will be spent on paperwork trying to comply with the reporting requirements. The 30%-40% figure is based on the need, at the end of the quarter, to call each of the active volunteers who were solicited and collect data on their follow-up solicitations, the number of recipients, copies of material, total expenses and allocation of expenses to each issue.

Since in many cases it is easier for the volunteer to relate to local or state issues, the net effect would be to cripple the chairman's efforts to keep volunteers working to influence federal decision-making.

Attachment D

Sierra Club—Problems Raised by Proposed and Emerging Regulatory Reporting Requirements

Definitions

Lobbying is defined one way in the Internal Revenue Code for federal regulation of lobbying and differently again in each of the states for lobbying reporting, necessitating the encoding of expenses by several different criteria.

This is true also of the definitions of fundraising and general and administrative expenses in proposed fundraising regulation.

Inclusion of the Executive Branch in lobbying reporting is at variance with the definition of lobbying under the Internal Revenue Code.

Reporting

A multiplicity of federal and state(s) agencies require reporting the same data many different ways for many different purposes using different definitions and criteria.

External reporting requirements would impinge on internal management information reporting and control requirements.

Ability to comply will be reduced by agency and audit standards which conflict with each other.

Standards, definitions and reporting formats adopted by AICPA differ from regulatory reporting requirements.

Costs

The cost of general and administrative structures will be substantially increased to handle the multiple reporting requirements.

The cost of government will be increased for each type of regulatory reporting and auditing added.

Public Policy

The general and administrative (G & A) costs of philanthropic organizations will increase to the point where an organization's fundraising G & A ratio exceeds that allowed by state laws. An organization would either have to cease operating or to change its operations to continue. This is not in the public interest.

The cost of government increases when several agencies regulate and audit the same activity many times over.

The inability of many philanthropic public interest organizations to comply with this multiplicity of regulatory reporting could force them into silence, infringing their members' rights under the First Amendment to the Constitution.

ATTACHMENT E

SIERRA CLUB—THE WEB OF PHILANTHROPIC/PUBLIC INTEREST REGULATORY REPORTING LAWS

Taxes

Sales, payroll and property taxes at Federal, State, county, and city levels.

Income tax

Federal 990, Federal unrelated business income, California Franchise Tax Board, District of Columbia.

Continuing development of other State requirements (49).

Charitable trusts

California, New York State.

Continuing development of other state requirements (48).

Financial

External financial statements—AICPA standards and audit, Internal management information, planning and control.

PROPOSED AND EMERGING REQUIREMENTS

Lobbying

Federal regulation of lobbying, California—FPPC.

Continuing development of other state requirements.

Fundraising

Federal Truth in Contributions legislation, Post Office regulation of organizations soliciting contributions by mail, States—diverse legislative movements to regulate philanthropic organizations by fixed ratios of general and administrative expense and costs of fundraising.

SUMMARY OF PROBLEMS (DETAILED IN ATTACHMENT D)

Definitions

Conflicting.

Reporting

Overly complex and duplicative.

Costs

Excessive to nonprofit organizations and to the government.

Public policy

Infringement of members' rights and frustration of public interest purposes.

Mr. DANIELSON. Thank you, Ms. Werner, and thank you Ms. Cohen.

Now, I have got a couple of questions. These are just structural.

You have done a very good job in putting together the panel, and I commend you on it. I think we will hire you as a moderator.

We have the five witnesses who have testified. I do not wish to—and we are going to focus on this group—but I do not wish to exclude someone else who may have come and who has not been in your coalition.

Is that a fact, or do you know?

Ms. COHEN. I do not know what other organizations——

Mr. DANIELSON. Well, is there someone here today who assumed that he or she was going to testify today? If so, raise either hand.

There are none. So we are safe.

One other question; I think in one of your statements—your name appears actually on three. One is Mr. Brock something.

Ms. COHEN. Mr. Evans, yes.

Mr. DANIELSON. I think you mentioned that you had invited the prolife group as well as the counterpart, but for some reason they were unable to attend.

Do you have a statement from them?

Ms. COHEN. They had the problem of not enough staff time to prepare something, and I do not know if they will be preparing something for the record. I do not know.

Mr. DANIELSON. We will keep the record open for a while so that if they wish to have their point of view made known—

You did contact them?

Ms. COHEN. Yes.

Mr. DANIELSON. All right. Fine.

Mr. Moorhead?

Mr. MOORHEAD. Thank you.

I think this panel demonstrates the fact that the lion and lamb can lie down together.

We are asked on many occasions, however, to make a choice, a value judgment as to who the "dolphins" and who the "sharks" are, and that is often very difficult.

You really would not want us to have a different kind of legislation pertaining to one group, than you would have to pertain to another, so that you would get your version of the sharks under the law, but not your version of the dolphins.

Mr. BEARD. No, Mr. Moorhead. I would agree with the statement that one of the members of the committee made at the last session, that if the law is bad enough that you have to start making exclusions of specific groups, that it probably should not be enacted at all.

I would point out I was simply trying to make the point that in attempting to do one thing you may, in fact, do exactly the opposite of that, because all of us wear gray hats rather than black and white hats, because we have single point of view that we are trying to put across.

And it just seems to me that it would be a blight on the political system if we did not allow large groups to lobby just as we allow small groups. But in attempting to get at the large groups, I am afraid we might put the smaller groups out of business.

Mr. MOORHEAD. Ms. Cohen, are you concerned that the new lobbying law might result in the Sierra Club loosing its nonprofit status?

Ms. COHEN. Mr. Moorhead, we lost it long ago. We are 501C4. We are not concerned about that. Our concern is about the subgroups. We have 330 of them—

Mr. MOORHEAD. Mr. Kindness' bill will help you out in that situation, and that is why I was asking about it.

We are not advocating this. We want to make sure that you do not loose that status, and that information is made availabel for IRS to take that—

Ms. COHEN. Yes, I understand that. But we do have that controversy going on with the IRS, anyway.

Mr. MOORHEAD. What do you think about state-wide geographic exemption, such as is contained in H.R. 2302?

Ms. COHEN. Well, it always sound, that kind of exemption always sounds good. But you have the problem of what happened with

borders and what people are inadvertently included in that spot they were included out.

It is very difficult for me to say right here—I would like to—if you would prefer, I could go into that in more detail.

Mr. MOORHEAD. Congressional district or county, so that is what we are really considering.

Ms. COHEN. Well, when you are talking about reaching the Senators of the state, when we are talking about reaching the Congressmen of the state, it sounds like you are talking about a home office.

But when we are talking about the Sierra Club, our 330 groups are not all in equal jurisdictions. Many of them are grouped in a single state or in a single group of states, and some groups cover six States at once.

Mr. DANIELSON. On that point—I did not want it to go by—Are your local groups autonomous? Are they tied in, tied to the top? Can you give us a little idea of the structure?

Ms. COHEN. The Sierra Club is organized from the bottom up. It started out as activist citizens, who then hired themselves a staff. And it always has been like that.

We have a small top, maybe 130 employees, serving almost 200,000 members. All of them think they have made the decisions.

And in effect, that is the way it goes. The local groups and the chapters send their agendas—

Mr. DANIELSON. Are they able to take positions which are in contradiction to the small top group?

Ms. COHEN. No, but you see, we have been in existence 100 years, and our board of directors' decisions are broad and very useful to the lower part of the Sierra Club.

So it is very easy, without getting direct approval from the board of directors, to find that a local group issue fits in, and then they proceed.

Mr. DANIELSON. I thank the gentleman for yielding—

Mr. MOORHEAD. What are you feelings about the Justice Department's proposal that the civil investigative demand be placed in this legislation?

Ms. COHEN. Are you asking me to get involved?

Mr. MOORHEAD. Yes.

Mr. COHEN. My personal preference is, I would like to see that. I have a strong distrust of subpenas in a civil situation, and I feel that where we have public participation, it is a delicate matter and could just as well be blown away by the first strong breeze.

And I think the threat of an investigation among local groups, among activists citizens, is more than enough to turn off interests in federal issues.

Mr. MOORHEAD. Mr. Brock Evans writes a column on Washington matters, which is carried in your monthly magazine.

Do you suppose if we pass a bill, with the grassroots provision in it, that that column could potentially be a solicitation under H.R. 1979?

Ms. COHEN. We would be very happy to send a copy of it every month to whoever wanted to collect it in Washington, for your records. I am sure you would see a stack every year of enormous proportions of that kind of material coming in from a number of organizations.

Mr. MOORHEAD. Well, that is a concern that many of us have, that this totally stifles the right of a free expression, if we have that particular requirement in the law.

Have you done any dollar estimates of the cost of compling with these proposals?

Ms. COHEN. The Sierra Club has, in the past years, and the amount of money that was determined last year, for the record, was $340,000 to set up a program of collecting the data around the country, in ten different stations, and then to keep an accounting system going.

Now, we have not updated it recently. We have not reviewed. And that's the figure from then.

We have more groups and more individuals to keep tract of then we used to, and I am not sure what the amount would be.

I would say even if that were $3,000 and not $340,000, that is an expense we are not budgeting for. We would have to collect more from volunteers, from donators, from contributors, and it would be very difficult to collect more than we are now trying to collect.

Every organization is in this same situation, when the economy is very tight. It would be a hardship for us.

Mr. MOORHEAD. Mr. Bowman, how much money does the NRA spend on grassroots lobbying each year?

Mr. BOWMAN. To be very honest, sir, under the terms of this bill, I do not think we could provide you with a figure, because a lot of it is done informally, telephone calls, we might meet with a Congressman or his staff, and if the response was less than satisfactory, we would call the head of the local Rod and Gun Club in his district.

And if the guy is busy, we may not do anything about it. If he is not busy and is upset about the issue, he might get 500 or 600 people to call into the office.

Mr. MOORHEAD. A lot of it is done by volunteer grassroots people and——

Mr. BOWMAN. All of it. The only thing, we have no paid staff except here in Washington. And we will call or write to people, and it is completely up to them what they do about it.

Mr. MOORHEAD. Does the NRA do mailings, solicitations to persons other than members of the NRA?

Mr. BOWMAN. No. To the best of my knowledge—and I have been there about 1 year and 4 months now—within that time we have done a number of solicitations and none have gone outside the membership list.

I do not know where we would get such a list to mail, frankly.

Mr. MOORHEAD. Do you feel that—as the others have stated—that you do not have any contributions that would be large enough to come up to the category suggested in this legislation.

Mr. BOWMAN. We receive all of our income either from dues or the purchase of advertising in our magazine and occasional contributions.

I just saw something that came in the other day, that a sportsman's club somewhere in New York State had had a social event and had a $100 profit and sent it on to us. But that is the only type of money that we will get.

Occasionally, an individual might have something in their will, or something, but as along as you have got a provision that any given percentage of the organization's operational budget, it would never come close to that.

Mr. MOORHEAD. But you feel in any event, whether it covers you or not, that that is a violation of the first amendment rights?

Mr. BOWMAN. Yes sir, very strongly.

Mr. MOORHEAD. Thank you very much, each of you.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

I get the uncomfortable feeling, that after 5 years—or whatever it is—involvement in this subject, some of us might be doing some rethinking of some basic premises involved in our approach to this type of legislation.

One of the things that struck me during the testimony this morning, was that maybe we ought not to be formulating legislation that gets at the registration and reporting by organizations. Wrongs that may be real or imagined in the area of lobbying are perpetrated by indivduals, not by organizations, ordinarily. Or, if they are perpetrated by organizations, it might possibly comprise or constitute a conspiracy under the criminal laws of the United States.

So why are we trying to get at organizations? All of the problems that are recited with respect to any of the bills before us, arise because we are trying to encompass, in a reporting situation, organizations.

I would just ask the panel, if they have any comments on this observation.

Mr. BOWMAN. I think it would certainly make things easier. Obviously, the individual lobbyist cannot keep track of what he is spending and what he is doing. And you would just not encounter this entire host of problems if you do restrict it to reporting by the individual.

Ms. WERNER. I think it is one thing to say we want to know who it is, who is lobbying and who is being paid to lobby, and asking for that information——

We certainly have no objection to that kind of legislation at all, as long as it would not affect, obviously, volunteers, but people who would be paid to do direct lobbying.

But, you know, I quite agree with what you said about the whole premise of problems with the lobbying disclosure legislation, and that indeed it really does create hardships upon organizations, which I think the people probably did not intend at all to have happen.

Ms. COHEN. Mr. Kindness, I want to go back over one thing that Carol said about volunteers.

There are a lot of volunteers that work predominantly as lobbyists on their own time, of their own discretion, but on behalf of an organization—they say they are, as so forth.

The problem that we encounter very often with volunteers is that they do so when they choose. They do not need to confront us, because nobody could fire them, or nobody could require it of them. And I would hate to see it happen as a matter of fact.

Our point of view, for the Sierra Club, is that we can comply with disclosing the direct lobbying of our paid personnel, our retained people, our people hired to lobby. We can do that.

We would resist as much as possible keeping records on our volunteers who in fact are our employees—and our employers, I mean—and we just could not in any way get that kind of information together. And I would hate to see individual citizens having to keep that information on themselves and turn it in when they are only working as assistants in an effort that they think is worthy for the public to hear their views, for the future, some kind of benefits.

Mr. KINDNESS. Well, of course, frequently we encounter situations where people are volunteers and completely unpaid, and may be even reimbursed for their expenses to engage persuasive activities with respect to legislation.

But they come before Congress, or contact members of Congress, representing themselves as speaking for large numbers of people or a group, regardless of compensation.

It does seem to me that people who purport to act for groups, probably ought to be in the same category with respect to the disclosure of what their activities are.

A very wealthy person might come here and spend a lot of time, and some of it improperly—perhaps in attempted bribes or whatever, I do not know—and be a complete volunteer in that respect.

Ms. COHEN. There is a law against bribery already on the books.

Mr. KINDNESS. Exactly. There are lots of laws on the books. We may not need to really increase their numbers, because the wrongs that are sort of vaguely referred to in the area of lobbying, I think are in the main, at least, covered by existing laws.

Whether we have a change in the law with respect to disclosure of lobbying activity or not, wrongs may still occur in the future, and they probably would not be prosecuted under a measure such as this anyway. Prosecutions will probably occur under other sections of the code.

So, I just sort of wonder whether we can ever get to the point where we really identify what we are trying to do here, and some of you have raised the question effectively.

And I think it has been a very healthy thing, in terms of seeing the legislative process operate over a 5-year period on this particular subject. We are getting some new thoughts all the time, and questions raised by people who did not speak up before. And it is probably a good thing that we did not have a bill passed in one of the last two Congresses, because some of these matters had not been throughly considered by a lot of people who would be affected by them.

I am sorry. That was not really a question. It was a statement.

I just wanted to thank you for your testimony this morning, all of you on the panel, which I think has been very helpful. It ought to cause us to do a little bit more rethinking of our basic premises upon which this legislation is proposed.

Mr. O'DONNELL. That is one of the concerns I tried to speak about, and that is if—really, what is the purpose of the bill, and really what we were trying to do is to find it. And when it goes through the legislative process, individual Congressmen who are

not that familiar with the bill will at least be able to see what the thrust of the legislation is, because I do not think—I think a lot of people had a lot of different ideas last year on the house floor as to what the purpose of the legislation was. And I——

Mr. KINDNESS. Well, I may be unduly influenced by the mountains of written material and the time spent on working on the criminal code—which is going on in another subcommittee—but I find that we are not going to have everything covered that could be involved here. And this bill is very possibly, in that light, a surplusage, except for one thing, and that is the one purpose that has been clearly expressed by other witnesses before this subcommittee as to why we should have such legislation as this. That is, to make it an easily available record for those people, reporters and certain organizations, to go to and glean information that they may seek to publish some place, to create impressions of what is going on in terms of lobbying.

We have heard allegations that there may be improprieties, that would be disclosed by this. But somebody who is engaged in some improper activity is very likely to engage in another improper activity by not reporting it, anyway. And I am not sure we are really meaning to solve the problem here, but rather to create one.

Mr. BEARD. May I say to that, it seems to me that is one of our concerns, that an organization that is large enough and well-funded enough, could evade whatever legislation—I am surprised to hear, for instance, the National Rifle Association saying they would not be covered by this. They are often used as examples of——

Mr. KINDNESS. That was a contributing part.

Mr. BOWMAN. Right.

Mr. BEARD [continuing]. An example of a well-financed, well-organized lobby group.

But a small organization, just getting started or underfinanced, would not be able to hire the kind of legal help that would be necessary to sidestep this kind of legislation the way a large organization could. And you could put that small group out of business.

An organization of white hats—as Mr. Moorhead mentioned—probably would disclose everything. And the black hats—if there are any—would not. And I do not see that the legislation would accomplish anything, other than harassing the smaller groups that want to try to abide by the legislation as fully as they can.

It would give a tool to the larger organizations to go after the smaller groups and put their competitors out of business.

Mr. KINDNESS. Well, I think the subcommittee members all probably share the feeling that the Congress has no right to license our first amendment rights, and that is essentially what could be involved here. I think we will be very cautious about that.

But I think the testimony we have heard this morning from this panel will be very helpful in thinking through some of these things, and thank you.

Mr. DANIELSON. Thank you, Mr. Kindness.

With all of this talk about white hats and black hats—I have been listening to this very line of testimony now for, this is the third Congress. And if there is one impression I have gotten, it is that I have not run into any black hats. They are all white hats.

But I think that the color of the hat lies in the eyes of the beholder.

Mr. MOORHEAD. That was the point.

Mr. DANIELSON. So I am not going to worry about the white and black hats. I am just trying to see, to put together—to meet that need. I can assure my friend from Ohio that if I have anything to do with it, there is not going to be a bill coming out of this subcommittee which I can conceive as fracturing even one little part of the first amendment. We might come close to it, maybe, but we will not fracture it. We will not tread on it.

Ms. Cohen, on the Sierra Club—and you need not answer this if you do not want—but I do not think you would be—I am trying to understand. You said it cost you about $340,000 to collect, prepare——

Ms. COHEN. It would. That was an estimate.

Mr. DANIELSON. Oh, it would cost?

Ms. COHEN. That was an estimate that we made last year.

Mr. DANIELSON. I thought that was past experience.

Ms. COHEN. We do not have a central accounting system, and we would have to set it up and then keep it working.

Mr. DANIELSON. I see.

Ms. COHEN. And that was the estimate of our comptroller last year.

We have not reviewed it. I do not know what this year's number might be, but it is an estimate. And as a matter of fact, I could not find out. I tried to find out what it did cost, except that we do disclose, under the 1946 law, what solicitations are required to be disclosed.

There is some kind of overall general number, some total of the costs. This is the outreach-type of material that goes from the central offices, as far as I understand.

I do not know what that number is. I am sure it is in a public record somewhere, and it is not in any way broken down by issues or by subgroups or by types of materials or whatever.

Mr. DANIELSON. Do you have any idea, can you give us a respectable guess as to what it costs you to comply with the existing law of 1946?

Ms. COHEN. I could find that out and supply it.

Mr. DANIELSON. You do not have it? I just thought you might.

Ms. COHEN. I will check on it.

Mr. DANIELSON. But do not make that a big program.

Could you tell us how many, in your tree of organization, how many chapters or subchapters or locals are there, whatever you call them?

Ms. COHEN. We have 330 units. That includes chapters, groups, sections of groups, each one with its own chariman, regional organizations—which are 10—and a number of standing committees that do their own work on special issues, including lobbying, if they so choose.

Mr. DANIELSON. But they take direction from the——

Ms. COHEN. But they are chapters or subgroups. What they do is they take the general policy on which the Sierra Club has based its decisions—of the board of directors—over the last 100 years. Then they go from there.

There is very little interchange between the subgroups and the board of directors.

Mr. DANIELSON. But it is definitely a structured organization, as opposed to a rather close coalition of people?

Ms. COHEN. Well, it looks structured on paper, sir.

Mr. DANIELSON. That is like the Democratic Party.

Well, that is OK.

On the purpose of such legislation, we hear from Common Cause and others that there is a people's right to know. And I respect that as a very important right.

But I kind of wonder if part of the purpose—not necessarily articulated—is that there should be some chilling effect on large-scale lobbying.

If a group or company or corporation *x* were to spend $5 million lobbying a particular issue, maybe if that fact were disclosed, it would slow them down a little bit and probably detract, diminish the $5 million, maybe down to $4 million, something like that, and that could be one of the—it certainly could be an effect, and it might be conceivably one of the purposes.

I do not know. That is a thought, which is free, and you can do whatever you wish with it.

I would like to ask you, Ms. Werner, you are registered as a lobbyist and so forth?

Ms. WERNER. Right.

Mr. DANIELSON. Are you satisfied with the existing lobbying law? Do you think it achieves any particular purpose?

Ms. WARNER. I do not think that it probably does achieve too much of a purpose, because as I understand it, there are not—well, that there are many organizations and individuals that do not register. And I recognize that has been unsatisfactory. And I am not sure exactly the proper way around this whole question.

Mr. DANIELSON. Does it not kind of strike you that perhaps you register and yet some of the bigger, much better-financed organizations do not have to?

Ms. WERNER. I would like to speak directly to that.

Yes, it does. And as an individual, and we as an organization, may be very curious. And we would like very much to know some things about some other organizations.

But at the same time, I think that we have to be very conscious of our curiosity and wanting to know something, as opposed to what is involved if people do have to disclose everything, and where it starts stepping on other people's rights, even though we may have a very acute curiosity and would give our eye teeth to know something.

Where do we really start drawing that line? And we are saying that it is more important that that line be drawn to really protect people than to cause what could be harrassment all the way around.

Mr. KINDNESS. Will the gentleman yield?

Mr. DANIELSON. Surely. Go ahead, Tom.

Mr. KINDNESS. I think there is a parallel here that experience ought to teach us with the Federal Election law and what is happening there. The principal use of the records that are filed there seems to be by opponents and those who are interested in the

mechanisms of political process, rather than serving any public purpose. And I think this is a parallel from which we ought to be able to learn something.

Mr. DANIELSON. Thank you, Tom.

From your observation, I suppose I can infer from your statement that we have to bear in mind a distinction between what we want to know and what we need to know.

Ms. WERNER. Right.

Mr. DANIELSON. Or maybe what we wish to know and what we need to know, would be a little bit more precise.

Ms. WERNER. Right.

Mr. DANIELSON. If you were to make any criticisms of the existing lobbying law, what comes to mind first and foremost for you?

Ms. WERNER. Well, there is the whole question, I guess, of—that, as everyone has said, that the law has no teeth in it, and there are even criminal sanctions attached to that law, although, since it has not been a law that could be really effectively enforced, you went into the whole question about, why have it.

So I think that is obviously a big problem with the law. But then we come back to what I said earlier, you know. I am not sure where you really do draw that line, and that I think that it is—I think it would be advantageous for everybody if people were encouraged to register, and perhaps organizations were encouraged to register, who were actually engaged in direct lobbying.

And we would encourage our affiliates to do exactly that, so that people knew who it was that was lobbying.

But when you start talking about really excessive reporting requirements and everything, it is a different ballgame. And we have very grave reservations about what that entails.

I wish I had the answer, but I really fear that the legislation before the subcommittee is not doing it in proper balance.

Mr. DANIELSON. Do you think that the legislation we have before us—take H.R. 81, for example—do you think it is better or worse than the existing law?

Ms. WERNER. It depends on your viewpoint. If you're interested in a law that supposedly can be better enforced, this is a good one. We still obviously have some very grave problems with even that.

I think it would be improved greatly by some amendments that have been proposed by ACLU. But I think that is still does pose problems.

Mr. DANIELSON. Ms. Cohen, do you have any comments on those questions?

Ms. COHEN. The 1946 law can be improved in itself through some really conscious attention to the objective of getting information on those who are paid to lobby, and then letting the issue drop right there.

Mr. DANIELSON. In other words, you would have it be applied more evenhandedly, is that what you are trying to say?

Ms. COHEN. But to those who are paid to lobby, and that is all, and not to require any additional type of information at all.

What H.R. 81 and other bills would be requiring is already forthcoming under IRS regulations, anyway. It is available to parts of the Government and to various people at different times.

The question is whether, really, the records need to be kept by those contacting Congress or do they need to be kept by the people being contacted?

And I am also advocating having 535 people keep records, rather than several million people potentially having to keep records.

Mr. DANIELSON. Well, that is an interesting point.

Ms. WERNER. But a good one.

Mr. DANIELSON. I would say you would have an awful time getting the majority of votes on that? It is a good point to talk about.

Do you have any criticisms of existing law?

Ms. COHEN. I do not myself, but mainly I am not the one in the Sierra Club who has the chore of filing all the reports. If we had our comptroller here today, I am sure you would hear plenty about paperwork. It is quite a job.

Mr. DANIELSON. I know that you are a registered lobbyist. You both are.

Mr. BOWMAN. That is an interesting point that came up last year in the full committee consideration of the bill. One of the Members—and I do not remember who it was, but I do not think it was anyone here—said we do not comply with the law, when in fact we have been a registered lobbying organization for years, but no one has ever bothered to go look it up. And you know——

Mr. DANIELSON. I do not know whether anyone has ever bothered to go look it up. Did you ever go look it up? And if so, did you find anything?

Mr. BOWMAN. The Congressional Quarterly publishes the filings reasonably often, and we can look it up there if we are curious, but——

Mr. DANIELSON. But you have not gone to the office where it is supposedly on deposit?

Mr. BOWMAN. No, no occasion to do so.

Mr. DANIELSON. Just for fun, have you ever?

Ms. WERNER. Yes, I have.

Mr. DANIELSON. You have?

Ms. WERNER. 1036 Longworth.

Mr. DANIELSON. Did you find anything?

Ms. WERNER. I mean, lobbying reports. Yes. I mean, it was very unclear as—there was still no way of knowing about the completeness of information or, you know, things like that. But I mean—but you clearly can find out what comes from a lobby if you have any inquiries, and you can find your own lobby.

Mr. DANIELSON. Except for the fact that it was a burden to go and do that, did you find out whatever it was that you wanted to find out?

Do not tell me what it was. I just want to know if you were successful in obtaining the information you sought.

Ms. WERNER. Only partially.

Mr. DANIELSON. Do you think anything was withheld from you?

Ms. WERNER. No, I don't—no, I do not think anything was withheld from me.

Mr. DANIELSON. You got cooperation?

Ms. WERNER. Absolutely.

Mr. DANIELSON. Maybe what we need to do is to make our records better once we have them, instead of constructing an awful lot more. I do not know. That is why I asked the question.

Ms. WERNER. Well, I think that you also end up with the whole situation, if you would require, say, as in H.R. 1979, if you would require all of the reporting of all sorts of solicitations or all of the lobbying activities that would be required by staff to determine whether or not somebody had made seven phone calls in a quarter, whatever, I would really question what the people maintaining these bodies of records, you know, what would really be done.

And it would seem to me that you would also end up in such—that you would have a case of such monstrous accumulation of records that even if you had the enforcement capability to make sure that people abided by the law, or that organizations abided by the law, that it would be impossible.

Mr. BEARD. Simply because of the excessive paper that the enforcers would have to go through—and then I think you would come down to a situation of what kinds of individuals or what—or what particular organizations your Comptroller-General, or perhaps certain other people, were really interested in, and that those people would be the ones that would be picked out to be investigated.

Mr. DANIELSON. Under the current law, as I understand it, you have to file at different places, with the House of Representatives and with the Senate.

Mr. BEARD. Original copies.

Mr. DANIELSON. That makes it compounded, if you have to file two different places, and each must be an original. I do not know if anybody has ever defined "original." I guess you just sign it individually with blue ink.

Mr. BOWMAN. They have to be notarized.

Mr. DANIELSON. Well, I think we can cure that under perjury. I am anti-notary-public and have been for a long time. Notaries go to the days, you know, when you signed your name in blood and put a thumb print in wax. And I think we are beyond that.

Would it not be better to have one filing place rather than two? That is one benefit we would get out of the GAO.

Ms. WERNER. Right.

Mr. DANIELSON. I do not know if that is enough of a benefit, but it is one.

Mr. BEARD. I do not know what type of recordkeeping system they have. I have never been over there to look up ours or any others. But I get the impression, from the correspondence I have had, particularly with the Clerk of the House's office, that it is a filing drawer full of cards or something.

Some of the questions that have come back 6, 8, 9 months after a form was filed, imply to me that there is very poor recordkeeping going on over there. I just do not know.

Mr. DANIELSON. Have you ever made an inquiry? And you say it takes 8 to 9 months?

Mr. BEARD. I have—we have never made an inquiry, but one of our forms had—we got a letter, I believe it was 9 months after a form was filed, saying that one line had not been filled out properly.

Well, I called back because the copies, the Xerox copies I had, showed that it had been. It took me quite a while to find anybody who could find out what the question was and the answer to it.

Mr. DANIELSON. In a few more months, the statute of limitations would have gone by.

Mr. KINDNESS. Mr. Chariman, I do have one other question on which I would like to solicit the thoughts of the panel. That is, if legislation is reported by this subcommittee to the full committee, and if the full committee reports the legislation to the House, and it gets by the Rules Committee, should there be incorporated in it that wonderful principle of sunset? And if so, how many years should this be allowed to have a trial period, so we do not come up 20 or 30 years from now with a subcommittee saying, we are stuck with a law that is no good, let us try to write a new one?

Maybe it ought to be good enough that subsequent Congresses would decide yes, affirmatively, we do want to extend it.

The principle of sunset, it seems to me, could well apply to a bill like this. But I would be interested in your views as a panel.

Ms. COHEN. Well, I think, since it is really a papermaking piece of legislation, that probably 1 year's time would be enough to see if it is bringing in too much paper by those trying to comply. It may take longer than that to convince some organizations, but I think the organizations trying to comply in good faith would be ready to clamor for it to be reviewed within that short period of time. They would have found out what it amounts to, really. Many organizations have not yet interested themselves in this legislation, hoping it would go away. And it did not.

And there are more appearing before the committees than ever before, because many groups have taken their own self-interest at heart and becoming aware and assigning their staffs to work on things that have nothing to do with what their members want.

But the fact is that this legislation is vital to the operation of an organization, and groups that have not yet paid attention to the impact that could be sustained by a piece of legislatin as complex as H.R. 1979, for instance, will be stunned, startled. They will be more than that—angry. You will begin hearing from them in any way they can make themselves known, without having to file another report on it.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Are you referring to the revolving door provisions in the ethics bill last year? Only it takes even less than a year for us to come back and take another look at it. And I offered an amendment last year on the floor for a sunset provision with a 5-year period.

You are referring that that is too long?

Ms. COHEN. It sounds much too long.

Mr. KINDNESS. Any other thoughts about sunset?

Mr. BEARD. I would certainly support the principle. I think that 1 year is too short and 5 years is a little bit too long. But I think the principle is a wise idea.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman.

Mr. DANIELSON. You know, it has been very helpful, your testimony today. Truly, it has. I guess it is helpful because it adds to

the confusion that we have as to what really is—what ought to be done with lobbying.

You, sir, with the antihandgun group, I assume you do not really—your group, your organization, has no reason for being except to try to influence legislation.

Mr. BEARD. That is correct. We are a single-issue organization, made up of multi-issue organizations. That is our sole purpose.

Mr. DANIELSON. It affects your whole reason for being?

Mr. BEARD. That is correct. We exist primarily by direct mail. We send out several million pieces of mail. A major portion of the mail is legislative, because our whole purpose is legislation.

Mr. DANIELSON. The bulk rate has gone over 9 cents for postage. It is awful.

And you, sir, with the Rifle Association, well, you do have a reason besides lobbying. You publish a magazine.

Mr. BOWMAN. Yes, sir. We are also the governing body for the national shooting sport in this country. NRA was in existence for well over 100 years before there ever became——

Mr. DANIELSON. Then you have at least a three-part reason for life?

Mr. BOWMAN. Yes, sir, Mr. Chairman.

If I might also——

Mr. DANIELSON. I only have one—go ahead. I enjoy it.

Mr. BOWMAN. In response to something you raised earlier, this legislation perhaps attempting to restrict the large groups, I think, very honestly, that this legislation may have the opposite effect. I think we have enough resources that we could, perhaps with some restructuring of our operations, and at great cost, comply with about any kind of restrictions you might want to pass.

I do not think Mr. Beard's group would be in the same situation, and I do not think a lot of the other groups would.

Mr. DANIELSON. Just for fun, and you do not have to answer this: How many members do you have in the National Rifle Association?

Mr. BOWMAN. The last count I heard was somewhere over 1,100,000, and we are just about to start a membership drive.

Mr. DANIELSON. Well, if I were that weak, I would certainly start a membership drive.

You do publish a magazine?

Mr. BOWMAN. Yes, sir.

Mr. DANIELSON. I know you do a lot of grassroots lobbying, because periodically you send out that spur that causes your people to get in touch with their Congressmen, and when a bill is pending someplace, you apparently have a telephone tree operation. You can somehow or other disseminate the word down to the troops that it is time to phone your Congressman.

And thank God we have a couple of unlisted numbers in my office in California, because we can have a couple of lines free for our own use.

But even so, you feel it is all done by volunteers?

Mr. BOWMAN. Yes, sir, every bit of it is. There is professional staff in Washington that makes the calls. There is in many cases what amounts to a telephone——

Mr. DANIELSON. You literally trigger this phoning system?

Mr. BOWMAN. Yes. But we have no way of knowing how many people they are going to call.

Mr. DANIELSON. Just put it all on message units. That would solve all their problems.

Thank you very much.

Do you have any more questions, Mr. Moorhead?

Mr. Kindness?

I do thank you sincerely for your help.

And, Ms. Cohen, you did a good job of putting together this panel. You have really covered the spectrum, and that is good. You are so well-disciplined that we are quitting ahead of time, and I think it is wonderful.

Ms. COHEN. Thank you.

Mr. DANIELSON. As an announcement, this probably is our last hearing for the taking of testimony with respect to H.R. 81 and companion bills. I say probably because we have not scheduled the next meeting and something could come to light in the meanwhile. And so, therefore, we are not closing the record.

Second, the record is being kept open. For one thing, we have the situation such as you mentioned, the prolife group. If they want to get their statement in, fine. I would urge that they do it fairly quickly, because we're not going to keep the record open forever, but for a reasonable length of time, 3, 4, 5 days. They should be able to get one in.

Lastly, we do have Common Cause. They were kind enough to lend to us a compilation of some information on the subject matter. We have looked it over just to be sure we are not duplicating a lot of printing, and a big chunk of it, I will ask that it be put in the record; they have alluded to it in the testimony.

That is where we stand. We are about to close the hearing, which means that we are about to commence markup. And my guess is that it will be in the week following the next week we are in session.

The Judiciary Committee has authorization for the Justice Department next week, and I do not see where we will find any time. So the next meeting will be subject to the call of the Chair.

So this meeting now stands adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned, subject to the call of the Chair.]

APPENDIXES

APPENDIX 1

THE POWER PERSUADERS: A COMMON CAUSE STUDY OF WHAT THE FEDERAL LOBBY LAW DOES NOT REVEAL ABOUT SPECIAL INTEREST LOBBYING ON THE CARTER ENERGY PACKAGE

SUMMARY

Individuals and organizations that lobby Congress are required by the Federal Regulation of Lobbying Act of 1946 to file quarterly financial reports with the Secretary of the Senate and the Clerk of the House. Because the law has been construed to cover only a small segment of all lobbying activity, however, the lobby disclosure system is a misleading charade. It consistently fails to provide the information necessary to evaluate the lobbying campaigns that play major roles in shaping important federal government decisions.

Lobbyists are the basic link between interest groups and government policy-setters. Particularly in a technical field like energy policy, lobbyists provide much of the information upon which the government bases its decisions. Since the information special interest lobbyists provide may be self-serving and one-sided, it is important that both the public and the government officials who use the information know who pays the lobbyists how much to do what.

The existing federal lobby disclosure system does not provide that basic information, as this study of the lobbying on President Carter's energy package shows. The energy proposals President Carter presented on April 20, 1977 aroused intense lobbying interest, both because energy policy affects every stratum of American society, and because so many deeply entrenched special interests have a vested interest in the impact of energy policy. Media accounts and observers on Capitol Hill described the lobbying as unusually intense. But the lobby reports energy interests filed did not reveal the intensity of the fight.

In this study, Common Cause compiled the lobby disclosure reports filed during the first nine months of 1977 by: (1) Washington representatives listed in the American Petroleum Institute's 1977 "Directory of Petroleum Industry Washington Representatives;" (2) Washington representatives of energy-related groups listed in the 1977 "Directory of Washington Representatives of American Associations and Industry;" and (3) lobbyists identified in media accounts of energy lobbying or interviews with Congressional aides, lobbyists, and reporters. Of the 376 organizations and 954 individuals checked by Common Cause:

Only one in ten energy-related organizations with Washington representatives register with Congress as lobbying groups.

Less than half of the Washington representatives of these organizations register with Congress as lobbyists.

A number of individuals frequently quoted and described as lobbyists in the press never register as lobbyists with Congress.

Most of those who do register with Congress report such small expenditures that their reports are close to meaningless. It is not uncommon for a full-time lobbyist to report expenditures of less than $10 a calendar quarter.

The cumulative spending reported by the gas and oil industry for the first nine months of 1977 is misleadingly low:

The oil industry reported lobbying expenditures of $600,000.

The gas industry reported spending $550,000.

The largest oil and gas trade associations—the American Petroleum Institute, with a 1977 budget of $30 million, and the American Gas Association, with a 1976 budget of $38 million—reported spending only $274,900 and $28,684, respectively, on lobbying. By contrast, Common Cause, with an annual budget of $5 million, reported spending more than a million dollars on lobbying during the same nine-month period.

A comparison with the lobby disclosure reports filed under California's much tighter registration law confirms that the federal reports are unrealistically low:

Three California gas utilities reported spending far more on California lobbying in 1976 than the entire gas industry reported spending on the federal level in the first nine months of 1977.

Three oil companies reported spending almost as much on lobbying California decision-makers in 1976 as the entire oil industry reported spending at the federal level during the first nine months of 1977.

The problems of the 1946 lobby disclosure law stem from three main flaws identified in the study:

First, the law covers only those whose "principal purpose" is influencing Congress. This has been interpreted in a way that creates huge disparities in coverage. No matter how much they spend on lobbying, for example, Mobil and the other major oil companies apparently rely on this loophole to avoid registering as lobbying organizations. They say their "principal purpose" is not influencing legislation but producing and selling oil. Yet groups that spend a small fraction of what the oil companies spend on lobbying must register if their "principal purpose" is lobbying.

Second, the law has been interpreted to cover only those who lobby by communicating directly with Members of Congress. This is widely interpreted as leaving outside the law's coverage the major growth area of today's lobbying—"grassroots" lobbying, the technique of soliciting calls and letters from constituents to their representatives in Washington. Today's lobbying campaigns frequently include expensive advocacy advertisements or mass mailings soliciting those outside Washington to express their opinions and lobby.

Third, the law covers only those who lobby Congress, not those who concentrate their lobbying efforts on the executive branch and the regulatory agencies. [This topic is not covered in detail in this study.)

Two case studies illustrate the flaws of the current lobby disclosure system. Mobil Oil spent four million dollars on advocacy advertising in 1977. Many of the fullpage newspaper ads Mobil bought were designed, complete with clip-out coupons to send to Members of Congress, to generate grassroots lobbying. Mobil is not registered as a lobbying organization. Seven individuals who lobby for Mobil are registered; together, they reported spending an aggregate of $796 on lobbying during the first nine months of 1977. The four million dollar ad campaign, and other institutional expenses, were not mentioned in the federal lobby reports.

In August of 1977, a number of utilities sent letters to their shareholders warning that the utility regulatory reform proposals Congress was considering would be harmful to their investment. The letters said it was a matter of some urgency that the shareholders write to Members of Congress asking them to vote against the legislation. The sample solicitation letters gathered by Common Cause cost a minimum of $157,800 to send. None of the utilities involved was registered as a lobbying organization, so none of that money was reported.

Some Members of Congress received more than a thousand letters opposing utility regulatory reform during the month the letters went out. They had no way of knowing how much money had been spent to generate the letters, how many people had been solicited to write, or what kind of response rate there had been. Worse, they had no way of knowing that they were hearing only from shareholders and not from the utilities' customers.

Two major lobby disclosure reform bills (S.1785 and H.R. 8494) are now being considered by Congress. The Common Cause study concludes that effective lobby reform legislation must include six basic remedies:

A. The new law should cover all groups that spend a significant amount of money or time on lobbying. Establishment of a quantifiable threshold for coverage would eliminate the unevenness resulting from the ambiguous "principal purpose" test and ensure that every organization doing significant lobbying registers as a lobbyist.

B. The new law should require that reports be filed by organizations, not by individuals. This provision would cut down on paperwork and allow the expenses of an entire organizational lobbying campaign to be filed centrally, with telephone, printing, salaries, and other costs figured in. As a result, the overall picture of an organization's lobbying efforts would come into clear focus. In addition, this provision would ensure that citizens who simply want to exercise their constitutional right to petition the government would not have to register as lobbyists.

C. The new law should have meaningful reporting requirements which include disclosure of major contributors and major organizational lobbying efforts.

D. The new law should cover all techniques currently used to influence government decision-making. The major growth areas in lobbying today are the "grassroots" lobbying techniques, like Mobil's advocacy advertising and the utilities' mass mailings mentioned above. Unless these activities are covered in the new law, the lobby legislation will be obsolete before it goes into effect.

E. The new law should cover lobbying of the executive branch. As a preliminary step toward executive branch coverage, Common Cause supports lobby disclosure coverage of those who seek to influence the awards of executive agency contracts worth more than one million dollars and the logging of contacts with lobbyists by high level officials.

F. The new law should include strong enforcement procedures. Thirty years of experience with the current law have shown that a lobby disclosure system can not work without strong enforcement procedures.

I. BACKGROUND

Until the New Deal, the federal government played a rather small role in shaping the economic environment of the thousands of different interest groups that make up American society. As a result, only a few special interest groups such as railroads and banks were particularly concerned with influencing government decisions.

In recent years, though, as government has become larger and larger, economic regulations of one sort or another have proliferated and become a force that touches nearly every aspect of American life. The explosion of big government has been dramatic; since 1940 the federal budget has multiplied from less than $10 billion to more than $500 billion.

The power of organized special interest groups has kept pace with the growth of government, as group after group has come to realize the importance of knowing what the government is doing and of the need to have some influence on government decisions.

The federal government first began to take an interest in special interest lobbies in the 1930's, when Congressional attention turned to the power wielded by the lobbies representing the utility and maritime interests. In 1936, following investigations of these two lobbies, the House Rules Committee proposed that lobbyists be required to register with Congress.[1] The Committee report said Congress and the general public "have a right to know by whom and in whose interest [lobbying] appeals are made, by whom [lobbying] movements are financed, and the manner in which money is expended . . . If it cannot stand publicity, it should not be permitted to exist."

Despite the two investigations, it was as an afterthought that the drafters of the Legislative Reorganization Act of 1946 included a section requiring those who lobby Congress to register and disclose their expenditures quarterly. The sponsors of the bill used as their model the bills drafted a decade earlier as a result of the two investigations. The report of the Joint Committee on the Organization of Congress, which recommended passage of the bill, devoted only three pages to the new lobby disclosure provisions.

According to the report, the disclosure law was designed to "enable Congress better to evaluate and determine evidence, data, or communications from organized groups seeking to influence legislative action," thereby avoiding the distortion of public opinion by hidden special interest lobbying campaigns.

From the very beginning, the lobby disclosure system has been crippled by major loopholes, sloppy legal drafting, and inadequate enforcement procedures. The 1946 Act required disclosure by any person or organization whose principal purpose is to solicit, collect, or receive money to lobby Congress. These persons and groups are to register as lobbyists and file financial reports itemizing their receipts and expenditures for each quarter of the year. The reports are kept by the Clerk of the House and the Secretary of the Senate. (See Appendix A on page 49 for the text of the Act.)

But the lobbying activities reported under the 1946 Act are only the tip of the vast special interest iceberg. The rest remains hidden from public view. The inadequacy of the law was forecast by a 1947 Columbia Law Review article which commented that, "The act was neither carefully drafted nor fully considered. Its ambiguous terms encourage evasion." The debate on the lobby disclosure bill, the article said, "could hardly be characterized as penetrating."

In 1963, Deputy Attorney General Nicholas deB. Katzenbach testified, "It was the intention of those who supported the Regulation of Lobbying Act to employ the glare of publicity to inform the general public and thus expose such activities to public scrutiny. I cannot honestly state that I think that the act has fully achieved its purpose."

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[1] A more complete history of lobby legislation can be found in "The Washington Lobby" (Congressional Quarterly, 1974) from which much of the informatin in this section is adapted.

In the one test case on the lobby law, *U.S.* v. *Harriss* (347 U.S. 612), the Supreme Court was only able to save the constitutionality of the poorly-drafted law by reading it so narrowly as to restrict its coverage to a small subset of all lobbyists.

In thirty-one years, the law has resulted in one test case and four prosecutions. There have been only two convictions, both in 1956, the most recent case under the law. This lack of enforcement activity is not because the system is working well, but because the terms of the law have been interpreted so loosely as to make it nearly impossible to hold a lobbyist to any standard of reporting.

The Justice Department has the power to investigate violators of the lobby act, but no mandate to review the reports that are filed. A Deputy Attorney General explained in 1975 that the Justice Department did not think it had either the manpower or the responsibility to do a thorough job of monitoring and oversight. As a result, the Justice Department acts only when it receives a complaint. The Clerk of the House and the Secretary of the Senate have neither the power to investigate the truthfulness of the reports they receive nor the power to compel lobbyists to register. Thus, there is no comprehensive enforcement effort.

In 1970, the House Committee on Standards of Official Conduct undertook the first serious evaluation of the 1946 Act. Witnesses at the October hearings on proposed reform legislation described the Act as vague, ambiguous, incomprehensible, unworkable, and deficient. They called it "a sick statute," "a nightmare". The Committee supported the reform action and proposed a bill, but the House as a whole took no action.

Again in 1976, some Members of Congress moved to reform the lobby disclosure law. Bills were passed by both Houses of Congress, but not in time to resolve House and Senate differences by the end of the legislative session.

So today, thirty-two years after its hasty passage, the 1946 Federal Regulation of Lobbying Act is still in effect, unamended and ineffective.

Three main loopholes in the 1946 Act, as commonly interpreted since the Supreme Court's *Harriss* decision, allow major lobbying campaigns to go completely unreported.

First, the law only covers those whose "principal purpose" is influencing Congress.

Second, the law only covers those who lobby by communicating directly with Members of Congress.

Third, the law only covers those who lobby Congress, not those who concentrate their efforts on the executive branch and its regulatory agencies. (This topic is not covered in detail in this report.)

In recent months, the power of one cluster of special interests has manifested itself in the fight over this country's energy policy. This study of energy lobbying will show the problems of limiting lobby disclosure to those who have as a "principal purpose" the influencing of legislation and who rely on direct communication with Members of Congress.

As this study shows, the lobby reports filed by energy interests for the first nine months of 1977 give a highly deceptive and grossly incomplete picture of the forces at work in shaping national energy policy.

II. 1977 ENERGY INTEREST LOBBYING

A. The Carter Energy Package

On April 20, 1977, President Carter proposed a comprehensive energy plan as a first step to deal with this country's galloping fuel consumption problems. Carter set out to deflect the impending energy crisis with a combination of taxes, credits, and regulations designed to slow down oil and natural gas consumption and switch some of the growing energy demand to alternate sources of energy.

The plan included eight major proposals:

Crude oil equalization tax (would raise the price of domestic "controlled" oil to the world OPEC price over several years, with a rebate to consumers);

Coal conversion tax (would encourage a switch to coal by taxing industrial users of oil and natural gas);

Natural gas pricing (would raise the price of natural gas while maintaining price controls);

Standby gas tax (would add 5 cents to the price of gasoline, up to 50 cents, each year the nation does not meet its energy goals);

Gas guzzler tax (would tax purchasers of fuel inefficient automobiles with a rebate to purchasers of fuel efficient cars);

Utility regulatory reform (would mandate a series of rate reforms for utilities to encourage conservation);

Investment credit (would give tax credits for investment in alternative energy equipment).

B. The Lobbying of Congress on the Carter Energy Package

Energy policy affects everyone. Deeply entrenched interests like the oil companies, the utilities, and the automobile manufacturers all have enormous stakes in maintaining an energy policy favorable to themselves. As a result, they have fought vigorously to make sure that any change will not adversely affect their position.

Predictably, Carter's proposed energy legislation set off a pitched battle, one that has still not been resolved. While the House passed a bill similar to Carter's proposal, the Senate killed many of Carter's most significant suggestions. The package has been the subject of heated controversy in a conference committee for three months. It is plain that what emerges will be significantly different from Carter's original package.

The Christian Science Monitor estimates that there are 10,000 lobbyists active in Washington; Newsweek says at least one thousand of them have some interest in energy. Few of these lobbyists opposed the entire energy package; few had any strong objection to the idea of some sort of energy legislation or any desire to paralyze the legislative process. Each was strongly concerned about the effect of specific proposals on the interest he or she represented.

The effect of so many lobbyists trying to cling to privileges for so many special interests is inevitably to slow things down if not to stall them completely.

Common Cause Founding Chairman John Gardner has likened the process to a group of onlookers at a game of checkers. Each person watching might look over the shoulder of a player and say, "Go ahead with your game, but don't move to this one square; I'll put my thumb on it to keep you off." Even if everyone wanted the game to keep going, it would come to a stop as the thumbs fill every available square.

The energy lobbyists were like that group watching the checkers game. Each wanted to hold on to one square—an existing privilege for the bus companies, the utilities, the small gas producers, the large manufacturers, or whatever interest the lobbyist represented. Everyone got into the act, from the National Caves Association, which worried about higher travel costs affecting tourism, to the trade association of shopping centers, which was concerned about utility metering of stores.

Observers describe the energy lobbying as among the most intense in history.

"You have to wade through the Senate reception room to get past all the lobbyists," Sen. Henry Jackson (D-Wash.) said October 13, 1977, of the gas deregulation fight. American Gas Association Vice President Nick Laird and Energy Action Committee Director James Flug disagreed on policy, but agreed that the lobbying was unusually heavy.

"It is one of the most all-out efforts I've ever witnessed," said Laird; Flug said, "From my experience on the Hill, I don't remember anything like it . . . maybe the exception is the anti-war movement."

The New York Times, reporting on June 19 on House Ways and Means Committee consideration of the bill wrote, "Nothing has been more apparent than the presence of the lobbyists, packing committee meeting rooms to overflowing, deluging staff and legislators with position papers and buttonholing influential people." The Washington Post, on the same day, said, "Lobbyists of every persuasion were whispering, cajoling, informing, and complaining . . ."

A month later, as the Commerce Committee considered natural gas deregulation, the Post reported that lobbying was still heavy: "Lobbyists from the gas industry and the administration packed the Commerce Committee room and swarmed through the corridors outside seeking votes in this multi-billion dollar struggle over the price of natural gas."

Lobbyists from the gas and oil industries were not the only ones jamming the corridors. Trade associations concerned with caves, convenience stores, and glass containers lobbied along with trade groups organized around wheat, meat, and manufacturing, each working to protect its own interests in the energy bill. Major corporations like Westinghouse, Ford, Boeing, and General Electric, and public interest groups like Energy Action, Environmental Policy Center, New Directions, and Ralph Nader's Tax Reform Research Group were also highly visible.

Millions of dollars were spent, not only to hire the lobbyists on Capitol Hill, but to wage far-reaching campaigns to influence the attitudes of the American people. Throughout the country, newspaper readers saw a barrage of full-page ads with headlines like:

"We have five critical steps to take to reach a workable national energy plan" (Texaco).

"The oil companies—they are me" (Continental Oil).

"Breaking up the major U.S. oil companies would create bigger problems than it would solve" (ARCO).

"When is an energy bill not an energy bill?" (Coastal States Gas Corporation).

"Mr. President, here's an unfair cost increase consumers don't have to pay" (Edison Electric Institute).

"Should a U.S. energy policy make me feel guilty about my lifestyle?" (Mobil). (For more on the Mobil campaign see page 28.)

Many of the ads urged the readers to tell their Representatives and Senators of their opposition to the energy package. Gasoline credit card holders and utility shareholders were also reached through mass mailings and urged to contact their legislators.

President Carter anticipated the special interest campaign. In his April energy address, he said, "We can be sure that all the special interest groups in the country will attack the part of this plan that affects them directly. They will say that sacrifice is fair, as long as other people do it."

Two months later, with the lobbying fight under way, Carter said, "I am deeply concerned about the inordinate influence of the lobbyists and representatives of the oil companies and automobile manufacturers."

Carter described the energy crisis as the "moral equivalent of war." If the analogy holds, the special interest lobbying campaign was the moral equivalent of wartime propaganda. But the lobby reports showed little of it.

With all the attention given to the special interests' activity on the energy legislation, it may seem surprising that there has been no real attempt to quantify the lobbying or to evaluate the resources of various competing interests.

There has been a steady flow of stories about the energy lobbying since Carter's plan was proposed in April. But few of the stories made an effort to analyze how much various energy interests spent to defeat the legislation, how many lobbyista they employed at what salary, and how fast their expenditures were increasing. Nobody knows which lobbying groups and businesses paid which lobbyists how much to do what.

The reason is simple: relevant figures are not available in any meaningful form. The lobby disclosure system as it currently works does not make possible a computation of how much is being spent to influence Congress and the American people on issues affecting energy—or any other national policy. Without this data, no one can describe to the public and Congress the real extent of the pressures on behalf of legislation that may transfer millions of dollars from one interest to another.

As generally interpreted, the 1946 Act contains loopholes so large that the data collected in the lobby reports are for the most part nothing more than a sham. The reports filed by energy lobbyists are not unique in this respect—the data are equally inadequate concerning the intense 1977 lobbying campaigns on common situs picketing, airline deregulation, the Clean Air Act, and many other bills.

This lack of information is dangerous. As Chief Justice Warren said in *U.S.* v. *Harriss*, the 1954 Supreme Court decision upholding the constitutionality of the 1946 lobby law, "Full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate [special interest] pressures. Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent" (347 U.S. 612, at 625).

Warren said the Congress had to know "who is being hired, who is putting up the money, and how much."

As this study will show, the 1946 Act as generally interpreted has not accomplished its purpose. There is no way for legislators to evalute the intense pressures they were subjected to by special interest lobbyists seeking to protect their stake in America's energy policy. Nor does the public have enough information to decide why legislators may have made the decisions they did.

The quarterly reports filed with the Congress are insufficient to determine who is lobbying, who is putting up the money, how much is being spent, and on what activities.

C. Energy Lobbying Data Filed Under the 1946 Act

Common Cause has checked a base group of 200 oil and gas firms actively concerned with the energy legislation and 616 individual lobbyists paid by those organizations to see how many file lobby reports with Congress and how much they reported spending. Common Cause also compiled the number of reporting lobbyists, and the expenditures they reported, from a base group of 176 organizations and 338 individuals in other energy-related industries. Data are taken from the first, second, and third quarter lobbying reports of 1977. The list of oil and gas lobbyists checked comes primarily from the American Petroleum Institute's 1977 Directory of Petroleum Industry Washington Representatives. The list of other energy-related lobbyists is drawn primarily from the 1977 Directory of Washington Representatives of American Associations and Industry (Columbia Books, Washington, D.C.).

Both lists of lobbyists were refined and supplemented from media accounts of energy lobbying and interviews with lobbyists, reporters, and Congressional aides. (The methodology of the study is described on pages 47–48.) While the data base is not definitive, it is the best one available. Common Cause believes the data in this study correctly reflect the current overall status of the lobby disclosure system.

The purpose of compiling this data was not to allege that any organization or individual is violating the law, but rather to illustrate the gross inadequacies of the current lobby disclosure law.

1. Organizational lobbying registration

Only about one in ten energy-related organizations with Washington representatives registered with Congress as a lobbying group. (See Table 1.)

Of the "Seven Sisters" (the biggest oil companies: Exxon, Mobil, Standard Oil of California, Standard Oil of Indiana, Texaco, Gulf, and Shell) none is registered as a lobbying entity. Most probably avoided registering because they did not consider lobbying one of their "principal purposes", as compared with discovering, refining, and selling oil.

The oil companies are not the only unregistered lobbyists of import. Most gas and electric companies do not register. Nor does the Edison Electric Institute, the electric utility trade association which Newsweek has reported having 30 full-time lobbyists. Nor do the Independent Petroleum Association of America, the American Mining Congress, the Electric Consumers Resource Council, or the Atomic Industrial Forum, to name but a few.

TABLE 1.—ENERGY INDUSTRY LOBBYISTS REGISTERED WITH CONGRESS

	Number of lobbyists reviewed	Number registered	Percent registered
Gas industry:			
Organizations	69	12	17
Individuals	196	58	29
Oil industry:			
Organizations	131	12	9
Individuals	420	172	40
Related industries:			
Coal:			
Organizations	16	3	19
Individuals	36	24	67
Mining (noncoal):			
Organizations	28	3	11
Individuals	43	19	44
Nuclear energy:			
Organizations	26	2	8
Individuals	45	18	40
Electric utilities:			
Organizations	106	5	5
Individuals	214	46	21
Total—organizations	376	37	10
Total—individuals	954	337	35

In some cases, the indivdiual lobbyists working for the group may register even if their employers do not. This is the case with most of the lobbyists for the oil companies. But such a system of registration leaves out various organizational expenditures and activities such as grassroots advocacy campaigns, and makes it difficult to get an overall picture of the organization's lobbying.

2. Individual lobbying registration

Among the individual energy lobbyists identified by Common Cause, less than half file lobby reports with Congress; in many cases, both the group and the indivdiual lobbyists have failed to file reports.

Dwight Porter, a Westinghouse employee whom one Senate aide described as the chief lobbyist for an ad hoc coalition involved with nuclear exports, has never

registered as a lobbyist. Neither has Westinghouse, a leading manufacturer of nuclear plants.

Ellen Berman of the Consumer Federation of America's Energy Task Force was featured in energy lobbying stories appearing in Newsweek, Time, The New York Times, National Journal, and other publications. She is among the most quoted energy lobbyists on the Hill, and publicly calls herself a lobbyist. Yet, neither Berman nor the Consumer Federation filed lobby reports in 1977.

Chris Farrand, the U.S. Chamber of Commerce's lobbyist on energy and environment, told Time magazine that on the energy bill he generated calls to Senators rather than going to Capital Hill becaue it was a more effective lobbying tactic. Farrand said essentially the same thing to the National Journal. Neither Farrand nor the Chamber of Commerce registered. [Farrand is no longer with the Chamber of Commerce.]

According to The Washington Post, former Senate Finance Committee member Vance Hartke (D-Ind.) was lobbying for small petroleum refiners. Hartke would not say who was paying him. "It's a confidential, lawyer-client relationship," he told the reporter. Hartke's firm's lobby registration identified neither its individual lobbyists nor its clients. The firm filed no financial data.

The National Journal, in a November 26 lead story on energy lobbying, described the off-the-floor maneuvers of Norman Sherlock who was trying to retain a million dollar a year bus subsidy for the American Bus Association. But Sherlock is not registered as a lobbyist for the Association.

3. Lobbying expenditures.

Even those who do register as lobbyists rarely report spending a significant amount of money. (See Table 2.)

The entire oil industry reported spending $158,879 for the first quarter of 1977, $185,062 for the second quarter, and $295,388 for the third quarter—a total of $639,329 for the first nine months of 1977. The gas industry reported expenditures of $123,827 for the first quarter, $206,182 for the second quarter, and $177,038 for the third quarter—a total of $507,047 for the first nine months of 1977. For comparison, Common Cause, with an annual budget of $5 million, reported spending $1,004,108 for the same period. That is one and a half times as much as reported by the entire oil industry and almost twice as much as the entire gas industry.

TABLE 2.—LOBBYING EXPENDITURES REPORTED TO CONGRESS

Industry	Organizations	Individuals	Total
Oil:			
1st quarter 1977	$135,113	$23,766	$158,879
2d quarter 1977	165,373	19,689	185,062
3d quarter 1977	276,922	18,466	295,388
Total one/1977 to nine/1977	577,408	61,921	639,329
Gas:			
1st quarter 1977	118,800	5,027	123,827
2d quarter 1977	189,166	17,016	206,182
3d quarter 1977	153,451	23,587	177,038
Total one/1977 to nine/1977	461,417	45,630	507,047

The largest organizational spender from among the oil and gas lobbyists is the American Petroleum Institute, a trade association representing the major oil companies. API, with a 1977 budget of $30 million,[2] reported spending $274,000 on lobbying during the first nine months of 1977. In the gas industry, El Paso Liquified Natural Gas Company led the spending with $225,803 in reported expenditures.

Those lobbyists who do file lobby reports frequently report spending only a few dollars a year. Robert Bizal, Standard Oil of Indiana's Washington Representative, reported total July-September lobbying expenditures of less than $3—32¢ for telephone and telegraph and $2.62 for miscellaneous. Rady Johnson, Standard Oil of Indiana's general manager for government affairs, reported as his total spending for the third quarter $2.16, for miscellaneous costs.

Standard Oil of Indiana is not the only one whose lobbyists report expenditures of under $10. David C. Branand, senior counsel to the American Mining Congress,

[2] According to API Director of Management and Budget William O'Keefe, $17.1 million of the $30 million budget is devoted to operations and the rest goes to research activities.

reported spending $3.50 on travel, food, lodging, and entertainment in the period between July and September. His total reported lobbying costs for the first nine months of the year were $9.05. George Glover, the National Association of Electric Companies' legislative representative, reported spending $2.31 in the same period, while William Megonnell, another legislative representative for the group, reported spending $1.83.

TABLE 3.—ITEMIZED EXPENSES REPORTED TO CONGRESS BY GAS AND OIL LOBBYISTS

Third quarter 1977	Organizations	Individuals	Total
Gas interests expenditures	$153,451	$23,587	$177,038
Public relations and advertising	7,500	.....	7,500
Wages, salaries, fees, commissions	87,381	7,715	95,096
Gifts, contributions	30,000	0	30,000
Printed or duplicated matter	10,425	65	10,490
Office overhead (rent, utilities, supplies)	4,552	4,341	8,893
Telephone & telegraph	4,134	573	4,707
Travel, food, lodging, entertainment	9,384	10,768	20,152
Miscellaneous	75	125	200
Oil interests expenditures	276,922	18,466	295,388
Public relations and advertising	7,000	.....	7,000
Wages, salaries, fees, commissions	214,098	2,483	216,581
Gifts, contributions	.....	200	200
Printed or duplicated matter	6,222	1,347	7,569
Office overhead	24,679	2,399	27,068
Telephone & telegraph	4,863	1,403	6,266
Travel, lood, etc.	16,581	7,955	24,536
Miscellaneous	3,478	2,680	6,158

The list could go on and on. And those who report spending a significant amount of money on lobbying may still report tiny sums for certain of their itemized expenditures. Jack Blum, head of the Independent Gasoline Marketers Council, reported spending almost $1,400 on lobbying between July and September, yet his itemized overhead expenditures (rent, supplies, utilities) are reported as $6.38. The United Gas Pipeline Co., which reported third quarter spending of close to $1,000 itemized its organizational telephone and telegraph lobby costs as $6.75; the Gas Appliance Manufacturers Association, which reported spending $2,335, itemized its telephone costs as $4.00. Common Cause, for purposes of comparison, reported $353,432.32 in lobbying expenditures for the third quarter of 1977.

D. Other Indices of Energy Lobbying

1. *California lobby disclosure.* Looking at other, more reliable indices of lobbying activity, it becomes clear that the gas and oil industries actually spend a great deal more on lobbying than is reported under the loophole-riddled 1946 Act. California's stricter lobby disclosure law offers an instructive comparison with the inadequate federal law.

Since 1974, California's comprehensive ethics legislation, the Common Cause-backed Proposition 9, has required financial disclosure reports from all lobbyist employers spending more than $250 in any one month and all lobbyists who receive payment to influence legislative or administrative decision-making in California. The California lobby reports filed under Proposition 9 are detailed, informational, and comprehensive.

The same oil companies which don't register as lobbying groups under federal law report spending hundreds of thousands of dollars to influence California decision-making. (See Table 4 on page 24.)

Table 4—1976 California lobbying expenditures

Gas	$930,968
San Diego Gas & Electric	389,919
Pacific Gas & Electric	245,377
Southern California Gas Co.	295,672
Oil	910,959
Standard Oil of California	292,933
Union Oil of California	146,876
Mobil Oil	107,540
Shell Oil	95,895
Atlantic Richfield	41,669
Getty Oil	41,148
Texaco, Inc.	20,916
California Council of Independent Oil Co's.	17,550
Exxon	17,648
Gulf Oil	18,614
Douglas Oil	16,500
California Independent Oil Marketeers Association	16,373
Aminoil	15,000
Westates Petroleum	13,000
Western Oil and Gas (trade association)	11,515
Champlin Petroleum	10,000
California Oil Marketeers Association	5,587
Continental Oil Co.	4,976
Phillips Petroleum	4,402
Mohawk Petroleum	2,817
Standard Oil of Ohio	10,000

In 1976, for example, Standard Oil of California reported spending $292,933, Union Oil $146,876, and Mobil Oil $107,540 on California lobbying—a total of $547,349, only $90,000 less than the entire oil industry reported spending on federal lobbying during the first nine months of 1977.

The gas industry fares even worse under comparison with the California figures. *Three California utilities* (San Diego Gas and Electric with $389,919; Pacific Gas and Electric with $245,377; and Southern California Gas Company with $295,672) *report spending $930,968 on 1976 California lobbying, one and a half times as much as the $507,047 the entire gas industry reported spending during the first nine months of 1977 on their federal lobby disclosure reports.* It should be kept in mind that this modest gas industry spending on the federal level came at a time when new legislation on pricing structures was viewed as crucial by the entire industry.

Other indices of lobby activity show that 1977 has been a time of big spending too, even if the expenditures have not been reflected on federal lobby disclosure reports.

2. Energy advocacy advertising

In a study of advertising in just four newspapers [The Washington Post, The Wall Street Journal, The New York Times, and The Washington Star), Common Cause found that between January 1, 1977 and May 31, 1977, industry and trade groups placed energy advocacy ads costing $1,131,588—more than the oil and gas industries combined reported spending during the same period.

That many of the ads were aimed at influencing legislation is clear from the timing as well as the content. Advertising running in April, the month Carter introduced his legislative package, cost $534,703, far more than was spent in any other month. The highest spending took place in the second half of April. (See Table 5 on page 27.)

Advocacy advertising has become an important force in many lobbying fights. Dr. S. Prakesh Sethi of the University of Texas, the leading academic expert on corporate advocacy advertising, has estimated that about 30 to 40 percent of the $293 million spent in 1976 on corporate institutional advertising was devoted to advocacy advertising—an estimated $87.9 to $117.2 million. That is about a 40 percent rise from the 1975 expenditures, according to the November 1977 Public Relations Journal.

The Journal reports that of the ten corporations spending the most on 1976 institutional advertising, seven were oil companies:

Exxon	$20,712,000
A.T. & T.	13,285,000
General Motors	10,826,600
Shell Oil	9,655,900
Phillips Petroleum	8,486,700
Texaco	8,188,100
IBM	7,673,000
Standard Oil of Calif.	6,448,300
Mobil	6,263,600
Standard Oil of Indiana	6,195,500

Sethi's figures do not include advertising expenditures by trade associations, which have traditionally been major advocacy advertisers. The American Gas Association, for example, spent $6.2 million on institutional advertising in 1976.

TABLE 5—ADVOCACY ADVERTISING ON ENERGY POLICY IN FOUR MAJOR NEWSPAPERS, JAN. 1, 1977 to JUNE 30, 1977

	2-week totals	Month totals
Jan. 1 to 15	0	
Jan. 16 to 31	$104,190	$104,190
Feb. 1 to 15	53,756	
Feb. 16 to 28	28,362	82,118
Mar. 1 to 15	76,494	
Mar. 16 to 31	215,054	291,548
Apr. 1 to 15	161,861	
Apr. 16 to 30	372,842	534,703
May 1 to 15	88,476	
May 16 to 31	30,553	119,029
Total		1,131,588
Top spenders:		
1. Mobil		401,912
2. Edison Electric Institute		51,618
3. Allied Chemical Corp.		47,744
4. United Nuclear Corp.		44,880
5. Texaco		37,551
6. Grumman Industries		36,566
7. Norton-Simon		36,566
8. Houston Oil & Minerals		31,875
9. Southern Co		29,525
Top number of different messages:		
1. Mobil		19
2. United Nuclear		12
3. Texaco		7
4. National Coal Association		4

None of these expenditures shows up in the federal lobbying reports under the 1946 lobby disclosure law. The Mobil case study which follows shows how energy advocacy advertising is not reported under the 1946 law.

a. Mobil Oil. Mobil spent about $4 million in 1977 on what the corporation calls "public issue" ads, an ambitious series of full-page ads and columns designed to educate the public on energy issues, according to Donald Stroetzel, Mobil Manager of Communications Programs. The corporation ads came in three main types in 1977, Stroetzel told Common Cause.

There was a series of advertisements that appeared opposite the editorial pages of The Boston Globe, The Chicago Tribune, The Los Angeles Times, The New York Times, The Wall Street Journal, The Washington Post, and The Washington Star. Washington was the only city in which the series ran in more than one paper. Many ads made direct reference to the energy package. Among the headlines were:

"An open letter to President Carter and the Congress."

"Should U.S. energy policy discourage coal mining?"

"Should a U.S. energy policy mean more deprivation for Americans who are already deprived?"

"Should U.S. energy policy discourage the finding of new oil and gas?"
"Should U.S. energy policy encourage a worse unnatural gas shortage?"
"Should U.S. energy policy make me feel guilty about my lifestyle?"
"Should U.S. energy policy worsen the dollar drain and strangle the economy?"
"Questions we wish the President would answer."
"If we tell you oil companies don't make enough profit, you'll have a fit."

Mobil also ran a column called "Observations" in Parade Magazine, Family Weekly, The New York Times Magazine, and a few other independent magazines. Stroetzel estimated that the column reached about 400 communities.

In addition, Stroetzel told Common Cause that Mobil ran an ad last August "in nearly every Congressional district." The August ad discussed the proposed energy package in some detail, organized around what it called the "four major faults" of the legislation. The ad ended with the following language:

"These are major faults of the energy program now before the Congress. They're the reason we strongly urge you, in your own self-interest, to write your Congressman and Senators now, while there's still time. It isn't too late to protect you and your children from higher taxes and long-term energy shortages.

"Write on your own stationery, or on the coupons below. If you're not sure which Congressional district you're in, call your local library to find out. But write right now, to prevent a terrible mistake in national policy."

At the bottom of the page, the ad had three clipout coupons, two addressed to the Senators and one to a Member of the House, saying that the sender was in favor of a plan that would avoid taxes that would "make American industry non-competitive", "reduce government regulation over the way Americans exercise their traditional freedoms of choice," etc. (See Appendix B on page 51.) The ad ended with the names of the Senators and Representatives from the area in which the newspaper was distributed.

Despite the clear relation of the ads to the energy legislation before Congress, Stroetzel denied that any of the advertisements were lobbying tactics.

"We don't consider any of these ads lobbying ads," he told Common Cause. "We're just trying to educate the public on a matter of great concern to them."

Mobil Oil does not register as a lobbying organization. Seven of Mobil's lobbyists do register as individuals receiving money to lobby for the company. Together, they report being paid about $24,975 to lobby during the first nine months of 1977 and spending $796 during that period. Those numbers are the only information available from the lobby reports on Mobil's activities.

Mobil's vast expenditures are excluded from the scope of the 1946 lobby registration law for two reasons. First, Mobil does not pass the threshold of coverage because in its view its "primary purpose" is not lobbying. And second, even if Mobil were covered as a lobbying organization, the expenditures for advertising would probably not be reported because they are not generally construed as direct communications with Members of Congress.

And yet, lobbying solicitation, also known as grassroots lobbying, is the major growth area in modern lobbying. As Richard Lesher, president of the U.S. Chamber of Commerce told The New York Times, "Lobbying that counts is done through the grassroots process." Or, as Time Washington bureau chief Hugh Sidey put it in a January 23 cover story on today's Congress, "The issues [Congress faces] are so complex and interlocking that about the only way to win major battles is to generate pressure in members' districts The oil industry probably has worked harder back home than it has in Washington to bring Congress to its current doubts about Carter's energy proposals."

Oil companies are not the only groups to use mass solicitations. Groups as diverse as the National Rifle Association, Committee for a SANE Nuclear Policy, and Common Cause [3] have all conducted successful grassroots lobbying campaigns. Advertising and mass mailing solicitations are among the main grassroots techniques.

3. Mass Solicitations: The Utility Campaign

Many utility companies turned to grassroots lobbying against another part of Carter's energy plan—the utility regulatory reform section, which called for time-of-day pricing and other conservation measures unpopular with the utilities.

In September, many of the utilities sent letters to each of their shareholders discussing the drawbacks of the Carter proposal. Some of the letters were simply one-sided; others were outright misleading. Some utility companies contacted not only their shareholders for lobbying help. Mississippi Power and Light, for example, distributed an alarmist letter to all mayors in its service area, beginning as follows:

[3] Common Cause reports grassroots lobbying costs on its quarterly lobby reports.

"*The very survival of the United States as a free nation* is threatened by the administration's so-called "National Energy Act," now pending in the House of Representatives in H.R. 6831 "National Energy Act" and a companion piece of legislation in the Senate. It is a direct attack on a vast segment of the private enterprise sector of unbelievable magnitude!

". . . *The proposals will result in energy famine for the United States, exorbitant prices and ultimate nationalization of the energy industry.* When this happens, *the free enterprise* system which has made our country great *will be doomed!* It is just that serious." [Emphasis in original.]

A few utilities used identical language in their solicitations, indicating that they had been drawn from a common source. Because the grassroots lobbying campaign was not reported to Congress, that source is not readily knowable.

All asked the shareholders to communicate opposition to the law to their Congressional representatives, a request that met with varying degrees of success.

Senator Charles Mathias (R-Md.) received about a thousand letters against utility regulatory reform, apparently generated by Baltimore Gas and Electric's shareholder appeal.

Senator Howard Metzenbaum (D-Ohio) received 1,295 letters on the subject during the month of September. The letters, 99.5 percent of them in opposition to the bill, used the same catch phrases as the Toledo Edison letter that had generated them. Most of the writers quoted the Toledo Edison estimate (computed by Edison Electric Institute) that the proposal would cost $60 billion. Only one indicated any understanding that the figure the writer was quoting represented a thirteen-year aggregate cost estimate and was subject to question. Most simply called it something like "this outrageous $60 billion Part E section" and asked Senator Metzenbaum to vote against it.

Toledo Edison is not a registered lobby group. Nor is Baltimore Gas and Electric, or any of the other utilities whose shareholder letters Common Cause gathered.

Neither Metzenbaum nor Mathias nor any of the other legislators who received the onslaught of anti-utility regulatory reform letters from their constituents could accurately guage the meaning or source of the letters. Lobby reports disclosed nothing about the solicitation campaign. The legislators could not know how many letters had been sent out, so they could not determine the response rate. They could not know the financial interest of the constituents from whom they got letters—that they were generally shareholders and not necessarily customers of the utilities. They could not know how much money had been spent to generate the constituent letters.

Toledo Edison as a regulated utility is required to file an annual report with the Federal Power Commission.[4] In that report, the company said it spent $146,006 on lobbying for 1976 state legislation. Among those costs, the company's breakdown showed that shareholder letters cost about ten cents each. Toledo Edison has 66,219 shareholders. At ten cents apiece, then, the company spent $6,622 generating letters to Senator Metzenbaum.

Together, the shareholder letters of the seventeen utilities Common Cause surveyed have 1,578,000 shareholders. At ten cents a letter, they spent $157,800 on generating grassroots lobbying letters. (See Appendix C on page 52 for a list of utilities included in the solicitation campaign computations.) None of these utilities is a registered lobbying organization, so none of the money was reported as a lobbying expenditure.

The campaign seems to have paid off. Congress will not require that state public utility commissions institute time-of-day pricing and other conservation reforms in their rate structure. These approaches will merely be recommended by Congress for consideration by the state commissions. The legislators who made that decision could not know to what extent they were bending to the will of the people and to what extent they were giving in to a powerful, well-organized special interest campaign.

III. REMEDIES

Common Cause believes that lobbying is not only a constitutionally guaranteed right, but an important and desirable part of our political process. As govenrment becomes larger and regulations more technical and farreaching, legislators and executive branch officials must rely increasingly on the special expertise and information that those outside the government have to offer.

A good lobbyist can provide much help to a busy legislator. This is entirely appropriate. Currently, though, a stigma surrounds the term "lobbyist" in the eyes of the public. There is an atmosphere of backroom secrecy and an aura of corrup-

[4]The Federal Power Commission is now the Federal Energy Regulatory Commission.

tion surrounding what should be seen as a natural exercise of the First Amendment right to petition the government.

Common Cause believes that a strong lobby disclosure law would not only help remove that stigma, but would help the public, the press, and the Members of Congress to evaluate the many-faceted lobbying pressures that play a large part in shaping this nation's governmental process. The antiseptic of sunshine on what is now a little-understood but extremely important part of American government would enable more balanced consideration of opposing viewpoints expressed on matters of public concern. Open and effective lobby disclosure would substantially help restore public confidence in the integrity of the lobbyists, the public officials, and the political process.

Lobby disclosure reform legislation is currently being considered by both Houses of Congress. Committee votes on the lobby bills are expected early in 1978, and supporters are hopeful that reform legislation will be passed by the end of the year.

The two major bills before Congress are S. 1785, sponsored by Senators Edward Kennedy (D-Mass.), Dick Clark (D-Iowa), and Robert Stafford (R-Vt.), and H.R. 8494, a bill reported last July by the House Judiciary's Administrative Law and Governmental Relations Subcommittee (chaired by George Danielson, D-Cal.). S. 1785 is before the Senate Committee on Governmental Affairs, chaired by Abraham Ribicoff (D-Conn.). H.R. 8494 is scheduled to be marked up in the full House Judiciary Committee, chaired by Peter Rodino (D-N.J.), beginning in mid-February.

Common Cause considers the key to effective lobby disclosure legislation to be the nature and amount of information disclosed, evenhanded coverage, and the assurance that all those engaging in significant lobbying will be reporting whether or not lobbying is their "principal purpose".

Common Cause believes that there are six basic elements that must be included in any meaningful lobby disclosure reform legislation:

First, the new law should cover all groups that spend a significant amount of money or time on lobbying.

The "principal purpose" test in the 1946 Act has been a dismal failure as a determinant of those who must register as lobbyists. The "principal purpose" test has created absurd disparities in coverage, with major lobbyists unregistered while small groups which engage in negligible lobbying faithfully file quarterly reports. Mobil spends $4 million on advocacy ads and employs at least seven lobbyists, but does not register as a lobbying organization. Neither do most of the other major oil companies, or manufacturers, or retailers. Influencing legislation may not be the "principal purpose" of these companies, no matter how much lobbying they actually do.

Common Cause believes that the new law must cover all groups doing significant lobbying at the federal level. We support a two-tiered system, like the "long form" and "short form" tax returns. Groups spending less time and money, or making fewer lobbying communications, can file abbreviated reports of their activities, while those running more ambitious lobbying campaigns file comprehensive reports. To be evenhanded, the new law must require that every organization making a given number of lobbying contacts, or spending a given amount on lobbying, or using a given number of employee hours to lobby, must register, regardless of its principal purpose.

We believe that this can be accomplished through the formula for coverage set forth in S. 1785.

Second, the new law should require that reports be filed by organizations, not by individuals.

Common Cause believes that the law should place the responsibility for reporting on the organizations that lobby, not on the individual lobbyists. Filing by organizations allows the expenses of the entire organizational lobbying campaign to be filed centrally, with telephone, printing, salaries, and other organizational costs figured in. It is less important that Congress be aware that, for example, Robert Bizal spent 32 cents on lobbying phone calls, than that Standard Oil of Indiana, his employer, report how much it spent as an entity to influence Carter's energy package. (The company's report should, of course, include the expenses of Bizal and all other lobbyists either hired by the organization or retained from an outside lobbying firm.)

Organizational filing would also cut down on the paperwork required from large lobbying organizations, which currently have to file overlapping reports detailing organizational and individual lobby spending. The American Petroleum Institute, for example, files reports both for itself and for its lobbyists, so each sum of lobbying money is reported twice, which can be confusing to those trying to get a picture of API lobbying.

Common Cause would also like to see the General Accounting Office made responsible for cross-indexing the organizational reports so it would be possible to determine the entire range of interests any individual is paid to lobby for. Such a compilation is difficult now because some lobbyists register individually, while others rely on their organizations to register, and do not file individual reports.

Filing by organization would also ensure that citizens who want to exercise their constitutional right to petition the government need not register as lobbyists. The recipients of the utility shareholder letters, for example, should feel free to write to their Representative or Senator without worrying about whether they will have to report their letter writing to the government. It is the utilities that sent out the shareholder letters, generating lobbying letters from constituents, which should have to disclose to Congress how much they spent on lobbying activities.

Third, the new law should have meaningful reporting requirements which include disclosure of major contributors and major organizational lobbying efforts.

The amounts and sources of money used to lobby, including the identities of significant contributors, are vital to any evaluation of lobbying activities. As the Washington State Supreme Court said in *Fritz* v. *Gorton,* upholding that state's tough lobby disclosure law,

". . . [To foster openness in government], it is important that disclosure be made of the interests that seek to influence governmental decision making. [The disclosure requirements] are designed to exhibit in the public forum the identities and pecuniary involvements of those individuals and organizations that expend funds to influence government. Informed as to the identity of the principal of a lobbyist, the members of the Legislature, other public officials and also the public may more accurately evaluate the pressures to which public officials are subjected.

". . . The removal of any one element [of the disclosure package] would conceivably leave a loophole area for exploitation by self-serving special interests." (517 P.2d 911, at 931)

Common Cause supports the system of financial disclosure by category of contribution, rather than specific amount, as set forth in S. 1785 and H.R. 5795, a lobby disclosure bill sponsored by Reps. Thomas Railsback (D-Ill.) and Robert Kastenmeier (D-Wis.).

The lobby reports must facilitate analysis of the methods and techniques being used in the lobbying campaign. In the case of the utility shareholder letters, for example, the lobbying technique that had been used would be disclosed under the major bills now pending in Congress.

Organizations that file reports should provide basic information about their issue interests, the key professionals who lobby on their behalf (including firms retained to lobby), overall expenditures, and the nature of solicitation efforts to stimulate lobbying by their members, employees, stockholders, and others. Common Cause believes written lobbying solicitations sent to or designed to reach at least 500 people, 100 employees, 25 officers or directors, or 12 affiliates should be required to be disclosed under the new lobby law. (This is the formula used in S. 1785 and H.R. 8494.)

There are those who claim that a law requiring itemized lobby reports covering the whole range of lobbying activities would place an unreasonable burden on the organizations that had to file. With the two-tiered approach suggested in S.1785, however, small groups with few resources would not be unnecessarily burdened with detailed reporting. Furthermore, placing the responsibility for filing lobby reports with the organization rather than the individuals would relieve part of the burden the law now imposes through double-filing requirements. Most of the information required for reporting by organizations can be readily drawn from information already kept in the regular course of business.

Fourth, the new law should cover all techniques currently used to influence government decision-making.

The major growth area in lobbying today is "grassroots" lobbying—the technique of generating lobbying contacts from people outside of Washington. Lobbying campaigns like the utilities' shareholder letters or Mobil's advocacy advertisements are increasingly common.

Vast sums of money are spent on these campaigns. The new law must seek information on the whole range of lobbying techniques in current use if it is not to be obsolete before it is enacted.

Grassroots lobbying is a useful and effective tool, and one that (in its best light) helps to enhance public participation in a representative democracy. If hidden, however, it can be a dangerous tool with which special interests can misrepresent their constituency. As Chief Justice Warren said in 1954, "[without lobby disclosure], the voice of the people may all too easily be drowned out by the voice of

special interest groups seeking favored treatment while masquerading as proponents of the public weal."

Grassroots lobbying is currently under review by the House Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs, chaired by Rep. Benjamin S. Rosenthal (D-N.Y.). The Subcommittee is investigating the extent to which big business and trade associations are illegally treating grassroots lobbying expenditures as tax-deductible business expenses. Without adequate lobby disclosure, however, it is difficult for even the Subcommittee to determine the extent to which different companies have been spending money on grassroots lobbying campaigns.

The companies and trade associations Rosenthal surveyed have been none too eager to disclose their spending. It has taken several letters from the Subcommittee, and a threat of subpoenas, to elicit the relevant information. Many companies initially responded that they could not break down their expenditures for grassroots lobbying—even though tax law requires that political activities like lobbying be treated differently from tax-deductible business activities. Hearings on the tax aspect of grassroots lobbying are expected to be held by the Subcommittee in February.

Fifth, the new law must cover lobbying of the executive branch as well as lobbying of Congress.

Decisions affecting the special interest groups are made in executive branch agencies and departments as often as in Congress. The pressure on the decision-makers is just as great, wherever the decisions are made.

After the energy legislation is passed, it will fall to the huge new Department of Energy to carry out whatever Congress mandates. The same pressures that were brought to bear on the legislators can be expected to pass to the agency officials. It is simply not logical to require lobby disclosure for only half of the decision-making process.

Currently, no public information is required about lobbying activities directed at the executive branch, leaving this lobbying one of the most secretive aspects of today's political process. Eighteen states already include executive branch information in their lobby laws.[5]

Revelations of the activities of the Northrop Corporation and other defense contractors in lobbying Pentagon officials dramatically underscore the need to cover those who lobby the executive branch. We need information on those who seek to influence policy decision-making concerning expenditures of federal funds such as contracts, grants, and awards. As a first step in this crucial area, Common Cause supports lobby disclosure coverage of those who seek to influence the awards of executive branch contracts worth more than one million dollars, as provided in S.1785. Common Cause would also like to see high level federal officials required to log their contacts with outside groups so that the public could better evaluate the ties between the officials and all the interests they deal with.[6]

Sixth, the new law must include strong enforcement procedures.

Thirty-two years of experience with the present law has shown that without strong enforcement, lobby disclosure requirements—no matter how comprehensive and tightly drawn—will be evaded or ignored. The Justice Department, because it is not required to review the lobby reports as they are filed, has consistently failed to act in this area, and the Act gives no enforcement powers to the Clerk of the House or the Secretary of the Senate. Common Cause believes that the new law should give the General Accounting Office responsibility for enforcing these requirements and making the information disclosed available to the general public. The oversight agency should have the power to investigate possible violations, issue subpoenas, take depositions, prescribe regulations, and initiate civil proceedings to compel compliance. The Justice Department would retain jurisdiction over criminal prosecutions.

Eleven states already have enforcement commissions to make sure there is compliance with their lobby disclosure laws. It is time for the federal government to catch up to the states in this area.

IV. METHODOLOGY

The fact that the lobby reports filed with Congress do not represent a comprehensive list of active lobbyists is in itself a measure of the need for better lobby

[5] A report on state lobby disclosure laws is available from Common Cause: "Lobbying Law Reform in the States" (January 1978).

[6] A proposed executive order on logging is contained in a recent Common Cause study, "With Only One Ear: A Common Cause Study of Industry and Consumer Representation Before Federal Regulatory Commissions" (August 1977).

legislation. Because the lobby disclosure system does not provide complete data, it was necessary in compiling the data in this study to develop a base list of energy lobbyists and lobbying organizations, in an effort to identify those who do lobby the government, whether or not they register as lobbyists.

The primary source for the gas and oil lobbyists was the American Petroleum Institute's 1977 Directory of Petroleum Industry Washington Representatives. The primary source for other energy lobbyists was the 1977 Directory of Washington Representatives of American Associations and Industry (Columbia Books, Washington, D.C.). Both lists were supplemented from media accounts of energy lobbying, and refined through interviews with lobbyists, reporters, and Congressional aides.

While the data base of lobbyists surveyed in this study is not definitive, it is the best one available. Common Cause believes the data in this study correctly reflect the problems of the current lobby disclosure system.

The group of oil and gas lobbyists whose lobbying activities are described in this study included 200 organizations or firms and 616 individuals. The other energy lobbyists surveyed included 176 organizations and 338 individuals.

All data were classified by organization, whether or not the organization itself registered as a lobbying entity. Common Cause used the organizational reports as the filing method to avoid counting the same money twice—once as reported by the organization and once as reported by the individual. Individual amounts were added in only when: (1) the organization did not register as a lobbying entity; or (2) the organization reported smaller expenditures than the sum of the receipts reported by the individual lobbyists the organization employs.

Data on the 1977 first and second quarterly reports of the lobbyists and lobbying organizations come from the summarized reports published in the Congressional Record of May 23 and August 18, 1977, with late reports added in from the Record of November 15. Data on the third quarter lobbying reports come from the reports themselves, as filed with the House of Representatives Office of Records and Registrations. This study included only those reports filed by October 20, 1977. [Third quarter reports were required to be filed by October 10.)

The data on California lobby spending are taken from the August report of the California Fair Political Practices Commission (Forty Million Dollars to Influence California Government, available from the Commission at 1100 K Street Building, Sacramento, California, 95814).

Appendix 2

A Summary of Lobbying Disclosure Laws and Regulations in the Fifty States

Introduction

It was almost a century ago that Mark Twain boasted he could "say, and say with pride, that we have legislatures that bring higher prices than any in the world." Yet Twain's remark could just as well be applied to the present condition of Americans' faith in their government. One senate poll, commissioned in 1974, revealed that 74 percent of the American people believe "special interests get more from government than the people"; another, a Harris survey released in 1975, reported that 72 percent of Americans feel "Congress is still too much under the influence of the special interest lobbies."

These are the kinds of pressures that have prompted officeholders at all levels to enact stiff codes governing their behavior as candidates for, and holders of, the public trust. And they generally have not been reluctant to ensure that those who regularly seek to influence their decision-making also share the burdens of "open government." Since Utah and Hawaii enacted their lobbying disclosure laws in 1975, all 50 states have had in place some form of controls on lobbyists.

Surge of State activity on lobbying during 1977

During 1977, the pace of lobby reform in Washington was far outdistanced by the surge of legislative activity on lobbying in the state capital. Last year, at least, 15 states—Alaska, Colorado, Connecticut, Delaware, Iowa, Massachusetts, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Virginia and West Virginia—and the District of Columbia, either adopted new lobbying reforms or had new or amended codes come into effect.

In June, two companies and a legislator facing court action agreed to pay Washington state the precedent-setting sum of $165,000 for having violated the state's lobbying-disclosure code (*State of Washington* v. *Seattle First National Bank et al.*, King County No. 804180; see *Lobbying Reports,* June 13, 1977). Other state administrators of lobbying laws heralded the settlement as "one more step toward legitimiz-

ing these disclosure laws," removing as it did the psychological barrier to imposing extremely high penalties for infringement of the public "right to clean and open government."

The National Association of Secretaries of State, a bipartisan group with no particular ideological line, unanimously resolved in September to urge the individual states to pass far-reaching lobbying codes that would cover identification of contributors to lobbying efforts, as well as lobbying of both the legislative and executive branches of government.

Affiliates of the American Civil Liberties Union have teamed with other local groups to challenge the constitutionality of lobbying provisions in at least two states, California and Rhode Island (In re *Barnhart,* California Superior Court, Civil Action No. 723-548; *Rhode Island Mental Health Association et. al.* v. *Burns).* Court rulings in both cases could come during the spring.

However, the biggest state story remains a California lower court's ruling that the state's 1974 Political Reform Act—by almost all accounts the most venturesome and cumberson "open government" law in the nation—is unconstitutional. The decision is being appealed to the California Supreme Court, whose ruling is expected to have broad ramifications for lobbying reform efforts in other states and in Washington (see "Lobbying Reports," Nov. 28, 1977, and Feb. 20).

The substance of "lobbying reform"

At least 10 states—Alabama, California, Connecticut, Idaho, Iowa, Kansas, Massachusetts, Nebraska, Nevada, Oregon—and the District of Columbia have gone a step past disclosure and *prohibit* lobbyists from making variously defined "gifts" to officials valued above a specified ceiling. (California additionally forbids lobbyists from making any campaign contributions whatsoever.)

But most of the laws now in effect compel lobbyists, and sometimes their employers, to disclose their operations in greater or lesser detail. How each of these laws define "lobbyist" is often central to its ultimate effectiveness. Key aspects of a definition are whether it:

Covers attempts to influence the activities of the legislative branch (and, implicitly, the governor's veto power thereof) only, or extends as well to administrative (rulemaking, ratemaking and other regulatory) action:

Applies only to those who lobby and are compensated, or make lobbying-related expenditures, or lobby full-time (as opposed to in relation to other employment duties), or make a threshold number of contacts, or spend a threshold number of hours engaged in lobbying activity. Most states formulate their own combination of these compensation, expenditure, full-time, contacts or hours tests:

Covers attempts to influence governmental action through indirect communication, or "grass roots lobbying," as well as through direct contact with policymakers. The components of disclosure often—but not always—include:

(1) *Registration.*—All states demand it in some form of those defined as lobbyists, and/or their employers. It may be a simple, name-and-address form which is valid until terminated or updated; or it may elicit elaborate information about the lobbyist (compensated or volunteer; status of employment, etc.) and employer (nature of business or association; subject areas of lobbying interest, etc.), require explicit employer authorization of the lobbyist to act on his behalf, and periodic renewal.

(2) *Periodic reporting.*—At least 45 states require some form of periodic reporting by either the lobbyist or employer, or both. Reports may be due for each legislative session, or else annually, quarterly, or monthly. The reports seek, with varying specificity, information in any of the following areas:

Expenditures: total, and by category (for indirect expenses, such as office overhead, clerical, research and other preparation of lobbying materials, travel, room-and-board, etc.; and direct costs, such as food and drink, entertainment, gifts, honoraria, etc.). Itemization of individual expenditures over a threshold value are a common feature.

Names of financial contributors to the lobbying effort.

Amount of lobbyist's compensation.

Full disclosure (name and address of recipient, amount, and purpose) of "gifts" from lobbyists to public officials, as well as other payments of transactions.

A note of caution: the report that follows, which attempts to summarize the lobbying laws of the fifty states in force at the close of 1977, should serve as a reference tool only, and should not be substituted for a careful reading of individual state laws.

ALABAMA

Lobbyists and their employers have been required to register and report their activities since passage of the 1973 Alabama Ethics Act. That statute, amended in 1975 and frequently reconsidered by the Alabama legislature, has been under unre-

lenting legislative attack for the restrictions it places on the private activities of state and local officials. The constitutionality of the law was upheld by the state supreme court in September 1976. However, the court did invalidate a provision—added in 1975—that, in effect, fired the present members of the state ethics commission which has enforcement authority over the law.

State Ethics Commission

The conflict of interest, financial disclosure, campaign practices and lobbying disclosure provisions of the Ethics Act are administered by the five-member Alabama State Ethics Commission. The commissioners are appointed by the governor, lieutenant governor, and speaker of the house to serve five-year terms; their reappointment is prohibited. The commission is empowered to interpret the law via regulations and advisory opinions, develop systems for cross-indexing disclosed information, preserve all statements for six years, and keep available for public inspection on its premises. It may also commence investigations, either upon written complaint or its own information, and direct the state's Examiner of Public Accounts to conduct a "thorough audit" of a lobbying group's records. Either the state attorney general, or the district attorney having jurisdiction over a suspected offense, may prosecute in the circuit courts.

For registration and reporting forms contact: Melvin G. Cooper, Executive Director, State of Alabama Ethics Commission, 312 Montgomery, AL 36104. Phone: (205) 832-5871.

LOBBYING DISCLOSURE

Who must register and report

Every agent who seeks "to encourage the passage, defeat, or modification of any legislation" must register with the commission exempt from coverage, however, are those who: (1) are public officials acting in their official capacities and with respect to subjects under their official responsibilities, and who make no lobbying-related expenditures; (2) provide professional services in drafting bills or in advising clients and in rendering opinions to legislators or legislative committees as to the construction and effect of proposed or pending legislation where such professional service is not otherwise connected with legislative action, (3) make only "isolated contacts" with legislators and act strictly on their own behalf, rather than as the paid agent of another party, or (4) appear before a legislative committee or committees on no more than a single day of a legislative session receive no additional compensation from their employer (other than reasonable and ordinary travel expenses) for doing so, and who identify their affiliations with an employer for the record.

Additionally, the employers of such lobbyists must submit a supplementary authorization of representation within 15 days of actual registration.

Registration is due within five days of commencing lobbying activities, and any substantial change in the information supplied in the statement must be reported within 10 days. The statement must include: (1) identifying information about the principal (including approximate membership size by category if the principal is an unincorporated organization), and (3) the legislative areas in which the lobbyist plans to be active. Termination of lobbying statements, also to be verified by principals, must be filed immediately after the cessation of lobbying activities.

Reports are required, from both lobbyist and principal, for each month during any part of which the legislature was in session.

A. Those from lobbyists may simply state that no lobbying activities occurred during the month; otherwise, they must disclose: (1) any changes in the legislative areas of activity; (2) the amount, by category, of lobbying expenditures made on behalf of each principal (including the lobbyist's lobbying-related compensation, but excluding personal living expenses); (3) funds loaned to legislators, or to anyone on their behalf, and (4) any business relationships with legislators or other public officials where the official's share exceeds 10 per cent of the fair market value of the business as well as the nature of the relationship.

B. The principal's monthly statement must reveal: (1) each lobbyist retained during the reporting period, and the amount of compensation or other disbursements made to each; (2) additional expenditures, categorized by their amounts, that the principal made himself; (3) loans made or promised to legislators or to anyone on their behalf; (4) direct business relationships with legislators, and (5) the categories of legislation subject to lobbying activities.

Additionally, those who are either paid to represent a client before a state agency, or who are associated with a business which receives a state contract valued above $1,000 (through a process other than publicly-noticed competitive bidding), must identify to the commission any adult child, parent, spouse, or sibling who works for

the particular agency. Each agency is responsible for notifying any affected party about this provision.

Limitations on gifts and other restrictions

The law prohibits spending more than $100 per year on any state official or employee—a limit that includes "social spending" for food, drink and entertainment.

Conflicts of interest for public officials

The Alabama Ethics Act's provisions that have drawn the most fire are those that pertain to possible conflicts of interest among public employees, especially the outside activities of the "lawyer-legislator." As amended in 1975, the law provides that no state employee, or employee of a municipality with a population above 15,000, may: (1) be associated with a business which receives any public funds, unless a disclosure statement is filed to that affect; (2) serve with a public agency that regulates an entity with which he is associated; (3) be associated with a firm which represents a client before an executive agency, unless a disclosure statement is filed to that effect; (4) be associated with a firm that receives public contracts through any mechanism other than competitive bidding (and that copies of competitively awarded contracts must be filed with the commission); nor (5) accept promises of future employment from entities regulated by the employee's agency. Furthermore, former employees must file statements of representation with the commission if they represent clients before their former agency for a period of three years after they left government. And—in what is probably the most controversial "conflict" control—the law bans lawyer-legislators, and their law firms, from representing any part of state or local government in their home-districts.

Personal financial disclosure

State workers whose annual earnings exceed $15,000 are also subject to stringent financial-interest disclosure requirements regardless of their outside activities.

No official can assume office unless he has submitted the required statement, which must include the official's name and address; names and residences of children and spouse; occupation of family members; any job of the officeholder in the preceding year which occupied more than one-third of his working time; list of income in the previous year, explained in categories such as "less than $1,000," "more than $10,000," etc.; any companies in which more than a ten per cent interest is held by the official or spouse; any firms of which the official or spouse is a director; enumeration of retainers received from business concerns which come under state regulatory agencies; real estate owned for investment purposes, categorized by worth in the form "less than $5,000," "more than $50,000," etc. These reports are required of candidates within 10 days after candidacy is registered officially.

Enforcement and penalties

Conviction carries a maximum penalty of $10,000 or 10 years imprisonment, or both.

(See: Alabama Ethics Act, as amended in 1975—Act No. 130, Regular Session, 1975—and Regulations Pertaining to Lobbyists and Lobbying Activities, as issued by the Alabama Ethics Commission.)

ALASKA

In 1976, the Alaska Public Offices Commission was handed jurisdiction over the new Regulation of Lobbying Act. The commission has since proposed numerous substantive and technical amendments to the act, and is delaying implementation of provisions affecting lobbying of executive branch officials until those amendments receive legislative attention.

Alaska Public Offices Commission

The governor is required to appoint two representatives from each of the state's major political parties, who in turn select a fifth commissioner. The four-year long terms are not subject to reappointment. While serving on the commission, members are barred from political activity.

The commission is empowered to issue regulations for the purpose of implementing the law, prescribe the formats for all required lobbyist forms, prepare and publish instructions with regard to lobbyist bookkeeping, as obligated by the act, and issue a public annual report of its activities, findings and recommendations by February 1 of each year. It must refer suspected violations of the lobbying code to the state attorney general for further action, although it can itself hold hearings and conduct investigations, and issue subpoenas for persons or documents. The commission must also make public at least quarterly and annual summaries of the

information furnished by individual lobbyists and their employers. For registration and report forms contact: Alaska Public Offices Commission, 610 C Street, Room 209, Anchorage, AL 99501. Phone: (907) 274-0321 or 276-4176.

LOBBYING DISCLOSURE

Who must register and report

In its Interim Instruction for Lobbyists, the commission has defined a "lobbyist" covered by the law as:

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through his agents with any public official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action; or

(B) a person who represents himself as engaging in the influencing of legislative or administrative action as a business, occupation or profession.

The commission has defined "substantial or regular" to mean spending in excess of four hours in any 30 day period in direct communication with lawmakers. Anyone who knows, or "has a reasonable expectation" that their activities will trigger this threshold-test, is expected to register and report as a lobbyist.

Exempted from coverage are those who are: (1) not paid to lobby and incur no lobbying expenses other than for reasonable travel and living costs; (2) state or local officials acting in their official capacities and within the scope of their employment; (3) involved in general media coverage, and do not contact officials for purpose of advocacy; (4) appearing solely at the invitation-by resolution of either house of the legislature, or by a majority of committee's membership, or (5) only advising clients as to the drafting of proposed measures, or as to their possible effects.

Registration

Lobbyists should register before engaging in lobbying, and must renew their registrations annually. Employers of lobbyists must file a verification of authorization statement within 15 days of employing or otherwise retaining a lobbyist, and must renew the statement annually. The lobbyist's sworn registration must include a photograph, employment information (such as whether he is a full or part-time lobbyist and whether he is paid by salary or fee), a general description of the legislative or administrative areas that will be lobbied on (including bill numbers and the agencies involved), and identification of the custodian of all lobbying records.

Reports

Both lobbyists and employer must file reports. Legislative lobbyists must report monthly while the legislature is in session, and quarterly otherwise. Administrative lobbyists and employers of lobbyists must report quarterly, and these reports are due during the month following each calendar quarter.

Their reports must contain: (1) a breakdown of payments received (such as fees, expenses and other things of value), as well as a cumulative total of payments received to date; (2) a similar breakdown of expenditures made; (3) the date, nature and recipient of any gift or exchange of money, goods or services valued above $100 and made to a public official or a member of his immediate family, and (4) disclosure of dealings above $100 with any business entity that the lobbyist believes has an affiliation with a public official.

Employers of lobbyists must report the nature and interests of their organization or business entity, and generally describe its lobbying activities. They must also file a statement detailing all payments made to lobbying agents and to others on behalf of those agents (including those for food and beverages, living accommodations and travel), and covering all other payments, including gifts or other transfers to public officials above $100 in value that were made other than through a lobbying agent. Both lobbyist and lobbyist employer reports include a "notice of termination" item, to be completed when lobbying activities cease.

Preservation of records

A lobbyist is required to preserve all "accounts, bills, receipts, books, papers and documents necessary to substantiate" a report for at least one year from the date the report was filed, and the commission may require their production at any time during that period. If the lobbyist turns any such records over to his employer, the responsibility for preservation also shifts.

Limitations on gifts and other restrictions

No lobbyist may place a public official under personal obligation, attempt to deceive an official, influence the introduction of a measure for the purpose of thereafter being employed to secure its defeat, or undertake a fee arrangement that is contingent upon a particular outcome.

Personal financial disclosure

Most top level municipal and state elected and appointed officials are required to disclose personal finances, including all sources of income above $100 received either personally or by a family member.

Penalties

Civil penalties are assessed for each day that a registration or report is late (at the rate of $1/day for the first seven days, $5/day for the next 14, and $10/day through the 30th day of delinquency). Knowing violations of the law are subject to up to $1,000 in fines and/or one year's imprisonment for individuals, and fines of up to $10,000 for each offense committed by non-individuals (such as a corporation, association, etc.)

(See Alaska Statutes 24.45, as amended in 1976, and the regulations pertaining to lobbyists and employers of lobbyists, as issued by the Alaska Public Offices Commission.)

ARIZONA

A package of amendments, most of which would have toughened Arizona's 1974 lobbying law, was defeated 11-16 by the state senate last May. Among the most controversial changes proposed by the measure (S 1387) were provisions that would have shifted the reporting burden from the lobbyist to his employer, and forced the disclosure of lobbying related income. A third unsuccessful change, hailed by supporters as a means to cut down the Arizona secretary of state's list of about 4,000 registered lobbyists, would have implemented a minimum compensation or expenditure threshold for determining who had to file.

Secretary of State

The Arizona secretary of state is responsible for prescribing registration and reporting forms, and preserving the information that is filed for five years, after which it is destroyed. For registration and report forms, contact: Secretary of State Wesley Bolin, State Capitol, Phoenix, AZ 85005. Phone: (602) 271-4286.

LOBBYING DISCLOSURE

Who must register and report

The current law defines "lobbyist" as "any person who receives any contributions or compensation or expends any money for the purpose of attempting to influence the passage or defeat of any legislation by the legislature of this state, or for the purpose of attempting to influence the actions of any state officer, agency, board, commission or council."

However, it specifies four main exemptions, for (1) any person who merely lobbies on his own behalf; (2) elected or appointed public officials who are acting in their official capacity and on matters pertaining to their public office; (3) those who limit their services to assisting in the drafting of legislation, or rendering opinions as to the construction and effect of proposed or pending legislation, and (4) attorneys who are representing their clients before a court or quasi-judicial body.

Registration All "lobbyists" as defined above, must register before "doing anything in furtherance of lobbying activity" and renew such registration each January with the secretary of state. Employers of lobbyists need not file anything.

The registration statement must include a list of employers (or clients) and the expected duration of each representation agreement, identification of those who pay for the lobbying activity (if not the employers themselves), an indication of which expenses will be reimbursed, and a statement of "the type and nature of compensation" (not necessarily the amount) that the registrant expects to receive.

Supplemental registration forms must be filed whenever any additional representation, not covered in the original registration, is undertaken. Such supplemental statements are due on or before the 40th day following the calendar quarter in which the change occurred.

A. MONTHLY LOBBYIST REPORTS

Reports

Lobbyists must file "financial reports" covering those months in which they made lobbying-related expenditures over $25. (Entertainment costs are included in the definition of "expenditures," but items such as personal travel, office overhead and clerical help, and legal fees are not.) These reports must be filed before the tenth day of the following month.

B. ANNUAL LOBBYIST REPORTS

In addition the lobbyist must file, in January of each year, a report itemizing each such expenditure and including the recipient and its purpose. Total lobbying expenses for the year must also be reported.

Limitations on gifts and other restrictions

The state's lobbying law prohibits any form of contingent fee arrangements. There is a general prohibition against "lobbying in an improper manner," including the transmittal of "spurious communications" by a lobbyist; violations of this prohibition constitute a misdemeanor.

Personal financial disclosure

Every state-wide official—including judges of the court of appeals and superior court—is required to file annual personal financial reports including names of his "immediate family"; any name under which the official or members of his immediate family do business; source of personal income, listing any netting more than $1,000 per year; goods received as gifts during the previous year by the official or his immediate family; holdings in corporations, trusts, partnerships, etc., greater than $1,000; all Arizona real property (excepting personal residence), names of individuals to which officeholder is indebted excluding certain routine personal and business debts. These statements are due January 31. Candidates for office must provide comparable statements when they register their candidacy officially. Penalties for failure to comply: fine of not less than $300 and not more than $1,000, or a jail sentence of not more than 30 days.

The Arizona law stipulated that municipalities are expected to create corresponding regulations governing their own officials.

Penalties

The state attorney general, or an attorney for a county in which an alleged violation of the lobbying code was committed, may investigate and prosecute the infraction. The law, however, contains no provision for the transmittal of apparent violations by the secretary of state to either of these enforcement bodies.

Knowing and willful violation constitutes a misdemeanor carrying by fines of $1,000, and/or imprisonment for up to one year. Officials that do not comply with the financial disclosure statute may be subject to a fine of between $300 and $1,000, or imprisonment up to 30 days.

(See Chapter 198, SB 1122, Thirty-first legislature, Second Regular Session establishing the lobbying code; Laws of 1974, Chapter 199, SB 1121, requiring public official financial disclosure.)

ARKANSAS

Arkansas' decade-old lobbying statute is one of a dwindling number of registration-only laws that have kept administration and enforcement of its provisions inside the state legislature, instead of assigning them to an executive branch department or an independent commission.

Clerk of the house; secretary of the senate

The clerk and secretary receive and store lobbyist registrations, and are jointly responsible for the designing of necessary forms. For registration and report forms, contact: Secretary of the Senate or the Clerk of the House, State Capitol, Little Rock, AR 72201. Phone: (501) 372-6211.

LOBBYING DISCLOSURE

Who must register and report

The 1967 law defines a "lobbyist" to be "any person, other than a member of the General Assembly, who, by his acts, as a representative of any recognized group or organization, or who for compensation, seeks to influence in any manner the vote of any member or members of the House or Senate, or the actions of the Committees of the House or Senate, upon any bill, resolution or other measure pending before

the House or Senate," or any of their committees. The law does not specify any exceptions.

Registration

Every "lobbyist" so defined must register with either the clerk or secretary at the start of each biennial session of the legislature. Upon doing so the lobbyist receives a registration card, which must be shown upon the demand of the chairman of any committee before which the lobbyist desires to appear (the committee chairman may also register the lobbyist). The registration statement asks the names of all employers of the lobbyist, and the nature of the legislation to be lobbied upon.

Reports

Nor reports are required.

Limitations on gifts and other restrictions

Arkansas' lobbying law does not place any restrictions on the gifts which public officials may accept from lobbyists. However, the state's ethics code prohibits officials from using their position to gain "special privileges," disclosing confidential information gained through public employment, accepting compensation from any tax-exempt organization or paying or receiving supplementary income from other officials.

Rule X of the General Assembly's Rules of the House prohibits any lobbyist—unless he is a former assembly member—from gaining access to the floor of the chamber while it is in session or in brief recess.

Personal financial disclosure

Every official must file a yearly statement on January 31 with the secretary of state disclosing any directorship or interest of $1,000 or more in firms or corporations coming under the scrutiny of a regulatory agency, and listing any businesses from which he received more than $1,500 compensation in the previous year. Violators can be prosecuted for a misdemeanor, subject to fines of not less than $50 or more than $500, and by up to 90 days imprisonment.

Penalties

The lobbying law contains no sanctions.

(See Act 162, passed in 1967, relating to lobbying disclosure; Act 313 (1971) relating to a code of ethics for public officials.)

CALIFORNIA

Last November, a lower court judge agreed with a group of professional lobbyists that California's 1974 Political Reform Act violated both the U.S. and California constitutions (*Institute of Governmental Advocates* v. *Younger*, Superior Court, Los Angeles County, No. C 110052). He ruled that the measure—by almost all accounts the most venturesome and cumbersome "open government" law in the nation—was unconstitutional because it unconstitutionally dealt with more than one subject, and violated various First Amendment guarantees. The decision against the act, which was originally approved by nearly 70 percent of the state's voters as "Proposition Nine," is on appeal and may well reach the state supreme court.

In a separate challenge to the broad record-auditing powers that the act conferred upon the state Franchise Tax Board, the Northern California affiliate of the American Civil Liberties Union defied an administrative subpoena for all its lobbying-related records and took the board to court instead (In re *Barnhart*, California Superior Court, Civil Action No. 723-548, heard Nov. 15). A decision in that case is pending.

Fair Political Practices Commission

The five-member commission cannot have more than three commissioners of the same political party. The governor is responsible for naming the chairman and one other commissioner, both of whom cannot be of the same party. The attorney general, secretary of state and controller select the remaining three commissioners. Commissioners serving from the outset will fill six-year terms except the governor's appointees, who will serve four-year terms. Subsequent members will sit for four year-long single terms.

Commissioners are barred from holding office or engaging in political activity, and employing or being employed as a lobbyist. With concurrence of the state senate, the governor can remove commissioners from office for dereliction of duty.

Duties include preparing forms, issuing regulations and advisory opinions, publishing information manuals and investigating violations of the act.

Any interested person may submit opinion requests to the commission seeking interpretation of the Political Reform Act. The commission has accepted requests provided the duties of the person filing the request were affected.

The commission receives complaints and initiates investigations into violations of the act. It can hire counsel, and possesses subpoena power for pursuing its investigations.

The state Franchise Tax Board is empowered under the act to subject lobbying organizations to annual audits of their lobbying-related records, and has administrative subpoena power to compel their surrender.

For registration and report forms, and copies of all pertinent regulations and advisory opinions, contact: The Fair Political Practices Commission, 1100 K Street Building, Sacramento, CA 95814. Phone: (916) 322-5660.

LOBBYING DISCLOSURE

Who must register and report

The law, as interpreted by the commission, specifies that a person must register as a "lobbyist" with the secretary of state if he either: (1) devotes, during two consecutive calendar months, a total of 40 or more hours on efforts directly or indirectly to influence legislative or administrative rate-making or "quasi-legislative" action, and at least 10 of those hours on direct communication; (2) is compensated $1,000-plus for direct lobbying communications in any 30 day period; (3) spends 200 hours in any two consecutive calendar months engaged in public testimony (including time spent preparing submissions for the record), or (4) spends 40 hours during such period on public testimony, and at least one hour on direct communication with officials of the agency to which the testimony is directed.

However, there are exemptions for: elected or appointed state employees acting in an official capacity or within the scope of their employment (although local government personnel are subject to the act if they either devote 40 hours to direct communication, or spend at least 10 of 100 or more lobbying hours engaged in direct communication during two consecutive months); owners or employees of the general media who urge legislative or administrative positions "in the ordinary course of business" (including the act of testifying, but not other direct lobbying contact); and those who belong to a bona fide religious group and lobby strictly to protect religious freedoms.

Registration

Registration, accompanied by a written authorization from each employer, is due before any lobbying occurs, and must be amended within 20 days of any change in the information supplied: otherwise, it must be renewed within 20 days of the opening of each regular legislative session. Notices of termination must come within 30 days after lobbying activities end (although the former registrant remains subject to the restrictions on gifts and political contributions for six months thereafter).

The registration statement must fully identify lobbyist and each employer, give the length of employment, if known, and name those state agencies that are expected to be lobbied. A $25 registration fee and recent photograph must accompany registration.

Reports

Periodic reports are necessary from (1) all registered lobbyists, (2) each employer who contracts or otherwise arranges for lobbying services, and (3) "any person who directly or indirectly makes payments to influence legislative or administrative action of $250 or more in a month" (other than payments which directly or indirectly benefit officials). Both types of reports are due in the month following any month during any part of which the legislature met, as well as in the month following the end of each calendar quarter. Both a company that retains a public relations firm to lobby, and the firm itself, are considered "employers of lobbyists" and are required to report under the act, whether or not their individual lobbying agents pass the $250 spending threshold.

The reports must contain, both for the period covered and cumulatively for the year: (1) a "specific description" of the legislative or administrative matters subject to influence over the period (and names of the agencies involved); (2) "payments made to lobbyists employed or retained" (broken down by lobbyist and categorized by compensation, expense-reimbursement, and advances or other explained payments); (3) "payments to influence legislative or administrative action" (including gifts, costs of food, drink and entertainment, and any other direct payments, as well as the costs of general lobbying-related overhead) and an itemization of those above $25 (made to other than an employee) and the gross compensation to lobbying employees; (4) other payments for the direct or indirect benefit of any state official or immediate family member, described by beneficiary and amount (if over $25), and

(5) contributions to election and ballot-issue campaigns (by recipient and amount). Those reporting must also disclose certain "exchanges" (transactions of value) with "specified persons" (whom the filer knows to be either a legislative official or candidate, employee of an agency which he will attempt to influence, or an immediate family member of any of these), or with "specified business entities" (in which a "specified person" is a half-owner, officer or manager). The exchange need not be reported if it is offered by the filer to the general public on the same terms, but must be disclosed if it is offered by the specified person, regardless of the terms. Furthermore, exchanges between individuals need be reported only if their fair market value exceeds $1,000, or (as in the case of wages) where the cumulative payments reach $1,000; exchanges between entities are reportable only after the $1,000 threshold has been reached. If the threshold is met, the exchange must be reported by name and official position of the specified person (entity), nature of the exchange, monetary value given, and monetary value received.

The first time he files a report, an employer of a lobbyist must additionally: indicate whether he constitutes an individual, business entity, or industry, trade or professional association; describe his business activity (or the segment of the industry, trade or professional interests represented); and identify any other group with common economic interests, or from which the employer's membership or financial support is "principally derived." If an association, the employer must give the size of its membership, and name each member if they total less than fifty.

Limitations on gifts and other restrictions—"Lobbyist account"

Any lobbyist who expects to incur expenses must establish at least one "lobbyist account," which may take the form of either an actual bank account, or a "ledger account" consisting of separately maintained books. If the lobbyist designates a bank account, all lobbying-related expenses except petty cash disbursements, must be made from it. If he designates a "ledger account," he must set up, at minimum, a "receipts journal," in which all receipts in connection with lobbying activity (and a pro rata share of general receipts) are recorded, and an "expenditures journal," in which all lobbying-connected expenditures (and a pro rata share of general expenses) must be entered. A third record showing all unpaid lobbying bills at the end of any month must also be kept.

Preservation of records

In addition to the accounts described above, every lobbyist must "maintain all of the original documents to support entries in the bank account or in any part of the ledger account" for at least four years, and the law specifies that they must "be ready for audit (by the state Franchise Tax Board) at any time."

The Political Reform Act contains what are probably the tightest controls on lobbyist spending in the country. Lobbyists may not spend more than $10—including all manner of gifts, food, drink and entertainment—on any one public official during any month. The "gift" restriction would not apply if the persons so entertained by a lobbyist in his home were to reciprocate for the hospitality during the same reporting period, but then only if the lobbyist does not pay for his entertaining out of a lobbyist account, if no portion of the cost is borne by his employers (or included in his compensation as part of an implicit understanding), and if the cost is not deducted from a state or federal tax return. (If all of these conditions are met, the fact of the socializing must nevertheless be disclosed, along with the names and official titles of those entertained, in the lobbyist's periodic report).

A second restriction in the law prohibits lobbyists from "making, arranging for, or acting as the agent or intermediary in the making of," political contributions to any candidate for state office. The commission has interpreted the ban to mean that no lobbyist could recommend a course of contribution-making to his employer. However, the California Court of Appeals rules in July that such a construction of the words "arranging for" unconstitutionally restricted free speech. A commission attorney has said that subsequent policy will be to "still regard it an unlawful arrangement if, for example, a lobbyist either passed along a request for a contribution from a legislator to his employer, delivered the contribution, made the decision to give it, or raised the money from which the contribution was made."

Other restrictions on lobbying behavior that pre-date the 1974 act, stipulate that lobbyists may not: place any state officer under a personal obligation; attempt to deceive an official with regard to the pertinent facts of an official matter; push for the introduction of a measure in order to gain employment in opposition to it; try to create a false appearance of public support for or in opposition to an official action; create a false impression of the ability to control an official's actions; or agree to accept compensation in any way contingent upon the outcome of a legislative or administrative matter.

Separate sections of the Political Reform Act deal extensively with personal financial disclosure and conflicts of interest affecting public officials. An official is barred from making, or in any other way participating in, a governmental decision, or from using his official position to influence such a decision in any way, if the official knows or has reason to believe that his "financial interest" is involved. The four tests of "financial interest" are: (1) direct or indirect investment in the affected entity of more than $1,000; (2) direct or indirect interest in affected property worth over $1,000; (3) income (other than commercially reasonable loans) from an affected source aggregating $250 or more and received or promised within the prior 12 months, and (4) a position of officer, partner, trustee, employee or manager in an affected entity. ("Indirect interest" means that which is held by a spouse, dependent child, an agent of the official, a business entity "controlled" by the official, or a trust in which the official has a "substantial interest." The official is said to "control" the entity if the persons above together hold more than half-ownership, or to have a "substantial interest" in any trust in which such persons' present or future interest exceeds $1,000.)

Personal financial disclosure

Elected state officers as well as municipal and county officials must file statements disclosing investments and interests in real property at the time they file their declaration of candidacy. Statements must be filed 30 days after they assume office and annually on that date thereafter until they leave office.

Statements must include a description of investments valued in excess of $1,000 (in categories of less than $10,000, over $10,000 but less than $100,000, etc.); real property valued in excess of $1,000; income other than gifts valued in excess of $250; gifts aggregating a value of $25 including the name, address and business of the donor, list of investments and real-property interests held by business entities or trusts in which the official or spouse owns a 50 percent or greater interest, etc.

Under the act, each state and local governmental agency, commission, or district must promulgate its own conflict-of-interest code to be formulated at the most decentralized level possible. These codes should correspond to the code provision set forth for elected officials prescribed in the act.

Penalties

The law provides both civil and criminal sanctions for violators of its lobbying provisions. Any person who makes an unlawful (or unreported) contribution, gift or expenditure is civilly liable for fines of $500 or three times the unlawful amount, whichever is greater. A late filing fee of $10 per day may also be assessed by the filing officer, unless he determines that the delinquency was not willful (but the penalty may not be waived if the late disclosures still are not completed within five days of written notification of their delinquency). The late filing charges cannot exceed $100 or the amounts that have gone unreported, which ever is greater.

Knowing or willful violation is a misdemeanor, subject to a fine of $10,000 or three times the unreported or unlawful amounts, whichever is the greater; prosecutions must commence within two years of the actual offense.

(See: Government Code, Title 9 (on Political Reform) as amended, Chapters 6 (on lobbying) and 7 (on conflicts of interest), and the regulations, guidelines and advisory opinions issued by the Fair Political Practices Commission.)

COLORADO

A battle between Colorado Governor Richard D. Lamm and the state legislature, over changes to be made in the state's lobbying disclosure law, ended in June when Lamm signed HB 1508, a substantial revision of the five-year old law. In April Lamm had vetoed an earlier measure, SB 21, calling it "loophole legislation" with provisions that would "substantially weaken" the Colorado lobbying code. Among other changes, the vetoed bill would have overturned the state attorney general's interpretation of the standing law as requiring itemization of each entertainment or gift item to a legislator above a $25 aggregate annual threshold, by allowing spending of up to $25 per month on an official without any itemization. The compromise measure signed by Lamm would require identification of all persons receiving $50 or more from lobbyists during either the first or second six months of the year. The new lobbying provisions took effect July 1.

Secretary of State

The secretary administers Colorado's lobbying disclosure code, with responsibilities that include preserving lobbyist statements for five years from the date they are filed and keeping them available for public inspection, and adopting rules and regulations to define, interpret, implement and enforce the provisions of the law. The Secretary of State's enforcement powers, broadened by HB 1508, include the

ability: (1) "request to examine or cause to be examined the books and records of any person who has received or is seeking to renew a certificate of registration as a lobbyist as such books or records may relate to lobbying"; (2) revoke or suspend a lobbyist's registration for up to one year, or to bar a lobbyist from registering for one year (or until the end of the biennial legislative session, whichever is longer) when the failure to provide required information is not properly accounted for within 90 days of the failure; (3) issue cease-and-desist orders to lobbyists who are found, after a proper hearing, to be violating the law; (4) investigate the activities of "any person who is, or who has allegedly been engaged in lobbying and who may be in violation," and (5) apply to the Denver County or City District Court for an order compelling a professional lobbyist who has not registered as required, to produce certain documents or give testimony. Contact: Daly Building No. 211, State Capitol, Denver, CO 80203. Phone: (303) 839-2041.

LOBBYING DISCLOSURE

Who must register and report

Any "professional lobbyist," before engaging in lobbying, must register with the Secretary of State and file monthly disclosure statements. "Professional lobbyist" covers "any individual who engages himself or is engaged by any other person for pay or for any consideration" to "lobby," i.e., to communicate directly, or solicit others to communicate with, a covered official for the purpose of aiding in or influencing legislative, or executive rule-making activities.

"Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his official capacity, nor any person who appears as counsel or advisor in an adjudicatory proceeding. And the definition of "lobbying" itself exempts: appearances before a legislative or executive rule-making entity when such appearance is the result of a voted request, subpoena or other order and less than three such appearances occur in a year; communications by a lawyer on behalf of an identified client and which "constitute the practice of law subject to control by the judicial branch;" and duties performed by legislative branch personnel.

Registration

A "professional lobbyist's" registration is required before lobbying activities commence, and must be updated every January 15 unless such activities cease. The registrant must include: the names and addresses of all persons for whom he will be lobbying; the expected duration of such lobbying; how much he is to be paid and by whom; how much he is to be reimbursed for expenses, and what expense items are to be included. Any person whose gainful employment includes only parttime professional lobbying "shall estimate the proportion of his employed time which he spends or intends to spend lobbying, and the percentage of his regular pay that will support lobbying." No employer authorization is required for registration.

Reports

Monthly disclosure statements by registrants shall include: identification of each contributor of $100 or more during the year for lobbying activities (including instances when that part of a multi-purpose contribution allocable to lobbying equals $100) as well as the total sum of the contributions made during the reporting period and since the beginning of the calendar year, whether or not individually above $100; the names of any covered officials who benefited from expenditures of $50 or more during either the first or second six months of the year, including the amount, date, and principal purpose of the gift, or entertainment (if actually received by the official or a member of bis family); the aggregate amount of such expenditures individually under $50 that were made during the month; the identities of any other recipients of lobbying expenditures of $50 or more during either six month period, as well as the amount, date, and principal purpose of each such expense, and the aggregate amount of such expenditures individually under $50 that were made during the month; total lobbying-related expenditures made during the reporting period and since the year began; expenditures made by a professional lobbyist or his employer to any mass-media outlet for publications or advertisements related to lobbying; and the nature of the legislative or administrative issues (including the specific matters, where known) for which lobbying expenditures were made or contributions received.

Alternatively, the reporting person may file statements to the effect that no change has occurred since the prior month's statement, or that no unreported contributions for lobbying are receivable and that no unreported expenditures for lobbying will be made during the remainder of the calendar year. (Expenditures related to the keeping of accounts, or the routine collection of statistics or other data, need not be reported. Expenses for activities which are preparatory to actual

lobbying communications are reportable, with the exception of those activities that occurred prior to the preceding calendar year.)

Such statements are to be submitted within 15 days of the end of the first calendar month in which any lobbying-related contribution or expenditure is incurred, and are to be filed within 15 days of the end of each subsequent month. One cumulative disclosure statement is also required for each year, to be filed the following January 15.

Monthly disclosure statements to be filed by executive branch officials or employees who lobby, would include: the legislation on which the reporting person is lobbying; any expenditure of public funds used for lobbying; and an estimate of the time spent, by all public employees involved, in preparing the lobbying presentation.

NOTE.—Monthly lobbyist disclosure statements—but not registration—are also required of (1) "any person who by himself or through any agent, employee or other person in any manner, directly or indirectly, solicits, collects or receives any money or any other thing of value at any time during the calendar year to be used for lobbying by any person;" or (2) anyone who spends, in the aggregate, $200 in a year (not including "actual and reasonable" personal expenses) on gifts or entertainment for the benefit of covered officials. This requirement does not apply to any political committee, volunteer lobbyist (whose only expenses are for personal needs), a citizen who lobbies on his own behalf, or any elected or appointed state official or state employee acting in an official capacity.

Officials and employees of the executive branch who lobby in their official capacity (not including making responses to inquiries from covered officials) must also disclose their activities in a different monthly disclosure statement.

Preservation of records

All persons required to file statements are also required to preserve such records as the secretary of state determines are necessary for the effective implementation of the lobbying law.

Other restrictions

If any person who engages in lobbying employs or causes the employment of any member of the Colorado General Assembly, any member of a rule-making board or commission, or "any full-time state employee who remains in the partial employ of the state or an agency," the employer must file a sworn statement within 15 days, specifying the nature of employment, identifying the employee, and stating the amount of any pay or other consideration.

The law prohibits fee arrangements between a lobbyist and an employer contingent upon the final disposition of a legislative or administrative matter.

Personal financial disclosure

The attorney general is responsible for receiving financial disclosure reports from public officials and amended reports to be submitted annually by January 10 of each year. Reports are to include the sources of any income, the identification of each business, insurance policy or trust, as well as any real property (or option to buy) within the state, the financial interest of which exceeds $5,000, the name of any creditor (and the interest rate) to whom is owed money in excess of $1,000, identification of all offices, directorships and fiduciary relationships, a list of businesses with whom there is an "association" and who do business with or are regulated by the state. The filee may submit copies of his Federal tax return to satisfy some of the above requirements. Disclosure applies to spouses and minor children residing with the parents.

Penalties

The secretary of state is empowered, upon finding a violation, to revoke or suspend for a maximum period of one year (or the remainder of the biennial legislative session, whichever is longer) the registration of a lobbyist for failure to file required disclosure statements, if the lobbyist is unable to satisfactorily justify the failure within 90 days.

The Colorado Supreme Court will decide, in response to an interrogatory soon to be posed by Lamm, whether his veto of legislation changing the penalty structure in a number of state statutes was constitutional. Assuming that his veto is upheld, willful falsification or omission of any material statement, or willful failure to comply with any other material requirement of the lobbying law, will be a misdemeanor carrying a fine of up to $5,000, and/or up to 12 month's imprisonment.

(See: Colorado Sunshine Act of 1972, Section III, Article 8; and HB 1508, (Fifty-first General Assembly, signed June 19, 1977) amending Colorado Revised Statutes, 1973, 24-6-301.)

CONNECTICUT

In July Governor Ella T. Grasso signed two measures that revised Connecticut's lobbying disclosure and ethics-in-government laws. The laws' provision for the creation of a new State Ethics Commission took effect October 1; all other changes in the amendments to the state's lobbying disclosure code are to be implemented Jan. 1, 1978.

State Ethics Commission

Under Connecticut's 1975 lobbying statute, the secretary of state was responsible for issuing advisory guidelines and prescribing registration and reporting forms; assessing a lobbyist registration fee; keeping a public "docket of legislative appearances," and referring apparent violations of the act to the state attorney general.

The new code passed in June transfers these administrative duties, as well as the enforcement function, to the newly created state ethics commission, consisting of seven members (one each to be appointed by the speaker of the house, the senate president pro tempore and senate and house minority leaders, three by the governor). The commissioners will serve four-year, staggered terms with no possibility of reappointment; no more than four members can be of the same political party. The law provides that the commission will retain an affiliation with the office of the secretary of state "for administrative purposes only." No commission member or employee may hold or campaign for any public office, nor have been a candidate within the last three years; hold office in any political party or political committee; hold membership in any organizations whose primary purpose it is to lobby; nor be a lobbyist registered under the act.

The commission's duties include: adopting procedural regulations and issuing advisory opinions (binding upon itself until amended or revoked) to any requesting person compiling all disclosure statements and ensuring their public accessibility and preparing quarterly and annual summaries of the statements and reports, as well as a yearly analysis of the commission's activities for the governor.

The commission is to investigate any alleged violation of the lobbying code upon its own information or the sworn complaint of any person, notifying both the complaining and the investigated parties that an investigation is underway, within five days. Preliminary inquiries to determine whether or not there is probable cause for a full-scale investigation must be kept confidential, unless the investigated party wishes them to be open. The suspected violator has the right at this juncture to be heard by the commission, personally or through counsel, and to examine and cross-examine witnesses. Both complainant and respondent must be notified of the completed investigation's results within three business days. If the preliminary investigation indicates that probable cause for a violation exists, then the commission is to begin full and open hearings, presided over by a state trial referee or senior judge. Both the commission and the investigated party may call witnesses and compel the production of documentary evidence. If it is found that the complaint was knowingly brought without foundation in fact, the respondent may bring an action against the complainant for double the amount of damages caused thereby, and be additionally awarded the costs of the action and reasonable attorneys' fees if he prevails.

Until the commission officially takes over the lobbying law on October 1, registration and reporting forms can be obtained from: State Ethics Commission, Secretary of State, 30 Trinity Street, State Capitol, Hartford, CT 06115. Phone: (203) 566-5827.

LOBBYING DISCLOSURE

Who must register and report

Under the former law, registration was required of "each person retained or employed for compensation to promote or oppose, directly or indirectly, the passage of any legislation, or to promote or oppose executive approval of any legislation."

The new law enlarges the definition of "lobbying" to include attempts to influence administrative action, but constricts its coverage to those lobbyists who receive or spend a threshold amount of money. As of January 1, registration will be required if a lobbyist (a) receives $300 or more in a calendar year, in compensation or expense reimbursement, "whether that compensation or reimbursement is solely for lobbying or the lobbying is incidental to that person's regular employment," or (b) spends $300 or more in a year for lobbying. Exempted from the new definition of "lobbyist" are: state or local government officials or employees acting "within the scope of . . . authority or employment;" individuals representing others before the state government for non-lobbying purposes; those who receive no compensation or reimbursement specifically for lobbying and who limit their activities to formal, duly registered appearances to deliver testimony; and representatives of the media who distribute news or editorial comment to the general public in the ordinary course of business.

Registration

Under the new law, a lobbyist must register prior to commencing lobbying activities, and renew the statement every January 15. Registrants who are individuals must file a separate form for each employer they intend to represent, regardless of the amount of that particular principal's reimbursement or compensation. The law provides for a "reasonable" registration fee, which is presently set at $10 per registration statement.

The statement must include: the name and address of the registrant's employer (including the principal place of business, if a corporation, and identification of the principal officers, if an association); identification of each individual who will lobby on the registrant's behalf; the nature of the principal's business and the compensation or reimbursement arrangement; and the legislative and administrative areas, by formal designation if possible, in which the registrant expects to lobby.

Termination statements are required of registrants within 30 days of ceasing lobbying activities.

Reports

Two kinds of reports are prescribed by the new law: (1) one, to be filed quarterly, by lobbyists attempting to influence administrative action, between the first and 10th day of April, July, October and January; and (2) the other, to be submitted by those who attempt to influence legislative activities, between the first and 10th day of each month in which the legislature is in session. Registered lobbyists must file a separate report for each employer, on a form to be prescribed by the commission, which shall include an itemization of each expenditure of $25 or more made for the benefit of the staff or family of a public official or for the official himself.

Limitations on gifts and other restrictions

The new lobbying law bans any registered lobbyist, or anyone acting on one's behalf, from giving gifts which aggregate over $25 in any calendar year to any state employee or public official, or to any member of their staffs or immediate families. ("Gift" does not include food and beverages consumed on a single occasion, or loans made under non-preferential terms.)

The companion ethics code passed by the legislature provides that no state employee or official may: (1) have any indirect or direct financial or other interest "which is in substantial conflict with the proper discharge of his duties;" (2) accept any outside employment that shall "either impair his independence of judgement as to his official duties" or induce him to disclose confidential information; (3) disclose confidential information for financial gain; (4) enter into a partnership or association or become a member of any group which gains anything of value by his appearing or otherwise making representations before certain state agencies; (5) accept anything of value, including employment, conditioned upon an effort to influence government action; (6) enter into—or allow an immediate family member, or business with which he is associated to enter into—any contract valued at $100 or more with the state, unless "the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded," nor (7) take an official action that would affect a personal financial interest, or that of an immediate family member or associated business, instead of disqualifying himself from doing so, unless he files a detailed public statement describing the conflict.

In addition, the new ethics statute prohibits any legislative commissioner (or any of his partners, employees or associates) from aggreeing to lobby for compensation. Intentional violation of the ethics provisions carries fines up to $1,000 and/or imprisonment up to one year; willful falsification of any information given during a commission proceeding may be punished by up to $5,000 in fines or five years' imprisonment, or both.

Personal financial disclosure

The new ethics statute contains Connecticut's first financial disclosure requirements for public officials, covering all statewide elected officers, covering all statewide elected officers, state legislators, commissioners, deputy commissioners, deputy commissioners, "and such members of the executive department as the governor shall require." The statements are to be open for public inspection, except that the names of an official's private clients are to be kept confidential until and unless commission determines there is probable cause for a violation. The disclosure statement shall include: names of all associated businesses; the category or type of all sources of income above $1,000 and an identification of those clients or customers providing more than $5,000 (but not the specific income amounts); names of securities whose fair market value exceeds $5,000 (except when those securities are held in a blind trust, in which case only the existence of the trust and the names of the

trustees need be disclosed); all real property and its location; and any fees or honoraria received in connection with a speech or other address (the latter disclosure being required within 30 days of such receipt).

Penalties

Upon a finding of violation, the commission has authority to order the violator to cease and desist the offense, file a missing or correct an improperly submitted report, and/or pay a civil fine of up to $1,000 for each violation. Intentional violations can carry up to a $1,000 fine and/or one year's imprisonment while willful falsification under oath in regard to any matter before the commission may result in imprisonment for up to five years and/or up to $5,000 in fines. The deriving of any financial gain from violating the act is punishable by a fine equal to three times the amount of the gain.

(See: Connecticut General Statutes, 2-45; Public Act 75-272 covering legislative agents and the Advisory Guidelines for Lobbyists issued 1/28/76 by the secretary of state; Public Act Nos. 77-605 (which pertains to lobbyists and becomes fully effective Jan. 1, 1978) and 77-605 (which pertains to a code of ethics for public officials and becomes fully effective Jan. 1, 1977).)

DELAWARE

When it took effect in Delaware last January 1, House Bill 1117 superseded a registration-only rule for lobbyists in the state house, and filled a complete void in the senate.

Legislative council

The Delaware Legislative Council is responsible for receiving lobbyist registrations and reports, maintaining a "Legislative Agent Docket," and furnishing copies of any docket entries to the chief clerk of the house, secretary of the senate, or governor upon request. The council—or the speaker of the house, presiding officer of the senate, or any other legislator—may refer a suspected violation of the code to the state attorney general. For registration and report forms, write: Office of Legislative Council, State Capitol, Dover, DE 19901. Phone: (302) 678-4114.

LOBBYING DISCLOSURE

Who must register and report

Delaware's registration requirements apply only to those who attempt to influence legislative matters that are pending before the general assembly, and then only when some form of direct contact is made. Registration with the council is required of "legislative agents," defined as those who act "to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly," and who either receive any compensation, make any expenditures, or are authorized to represent "any person who has as a substantial purpose the influencing of legislative action."

However, the definition exempts persons: restricting their activities to drafting or advising as to the effect of legislation, but who make no lobbying communications; testifying in public at the specific request or invitation of the legislature; elected state or local officials acting in their official capacities (and, as the result of a 1976 attorney general's opinion, all other executive branch employees who "as a portion of their overall duties" try to influence legislation which affects their respective departments, divisions, agencies or other state bodies); and lobbying communications undertaken as an "isolated, exceptional or infrequent activity in relation to the usual duties" of employment, or as a means of personal expression unrelated to compensation.

Registration

A legislative agent must register prior to lobbying, or within five days of spending any funds related to lobbying. The statement must identify the agent and each employer, the date on which the representation began and how long it is to continue, and the subjects of the legislation to which the employment relates at registration time. Any changes in the contents of the registration statement must be submitted to the legislative council within five business days.

Every employer of a lobbyist must file a separate authorization statement within 15 days of his agent's registration, with any changes to be reported within ten business days and the full statement to be renewed each January. The authorization must state the employer's business, explain whether the agent has other nonlobbying duties, name the custodian of the records needed for substantiation, and describe any arrangement where more than half of the agent's fee is contingent upon the outcome of a legislative action.

Reports

A legislative agent must file separate disclosure reports on or before the 20th day of each month following a calendar quarter, for each employer he represents. The reports should include total expenditures made directly on legislators in the following categories: food and refreshment; entertainment; lodging; fair value of travel beyond 100 miles; recreation expenses; and gifts and (other than political) contributions. In addition, any legislator receiving more than $50 in such expenditures in a single day must be listed, along with the amount of the expenditure.

Limitations on gifts and other restriction

The law prohibits arrangements between a legislative agent and an employer wherein more than half of the fee is contingent upon the final disposition of a legislative matter.

Penalties

Failure to file any employer authorization or any report under the law is deemed a voluntary cancellation of registration by a legislative agent, who is then prohibited from reregistering or lobbying until all delinquent documents are submitted. Knowing failure to register, or knowing falsification of information, both constitute Class C misdemeanors.

(See: House Bill No. 1117 (128th General Assembly, Second Session, 1976), now Chapter 16 of Part II, Title 29 of the Delaware Code.)

DISTRICT OF COLUMBIA

The regulation of lobbying before the city council of the District of Columbia and the agencies of the District government has changed significantly under home rule. In early 1976 the council adopted legislation that repealed the existing lobbying law (Title V of the Congressionally enacted District of Columbia Campaign Finance Reform and Conflict of Interest Act) and substituted its own, substantially different measure, which has since been amended. Regulations to interpret the present law are being drafted.

Board of elections and ethics

Oversight of lobbyist regulation rests largely with the Director of Campaign Finance inside the D. C. Board of Elections and Ethics. The director receives lobbyist registrations and reports, summarizes them for publication by each August 15th in the D.C. Register, and has enforcement authority over the lobbying law. The members of the three-person board are appointed to three-year terms by the mayor, with the approval of the City Council. For registration and report forms, write: Director of Campaign Finance, Board of Elections and Ethics, Government of the District of Columbia, District Building, Washington, D. C. 20004.

LOBBYING DISCLOSURE

Who must register and report

Registration and reporting is required of those who either are compensated, or who spend, $250 or more in any three consecutive calendar months, for lobbying. (The $250 compensation threshold applies regardless of whether lobbying is a principal function of, or only incidentally related to, employment.) "Lobbyists" under the law are those who communicate "directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision." "Legislative action" as defined includes "any activity conducted" by a legislative branch official "in the normal course of carrying out his duties as such an official, and relating to the introduction, passage or defeat of any legislation in the council."

"Administrative decision" lobbying—not covered for the first time the present D.C. lobbying law—covers "any activity directly related to an action by an executive agency to issue a Mayor's Order, to promulgate an issuance within the Administrative Issuance System (except individual personnel matters), to undertake a rule making proceeding which does not include a formal public hearing . . . or to propose legislation or make nominations to the Council, the President, or the Congress."

Exempted from the definition of "lobbying" are: persons who appear or give testimony on their own behalf, or engage an attorney to represent them in a rule-making, rate-making or adjudicatory hearing before an executive agency or tax assessor; information supplied in response to a written official inquiry; requests for the status of specific legislative or administrative actions; testimony given before the council or one of its committees on the public record; communications made through the mass media; and communications made by any bona fide political

party. Registration is also not required if the lobbying is undertaken by a public official or employee acting in an official capacity, or by any candidate, member or member-elect of an Advisory Neighborhood Commission.

Registration

All lobbyists so defined must register within 15 days of becoming a lobbyist, and by January 15th of each year thereafter. (A separate form must be filed for each person from whom compensation is received.) The registration must include: identification of each person who will lobby on the registrant's behalf; the nature of the employer's business and the terms of the compensation; and an indication, by formal designation if known, of the matters on which the registrant expects to lobby.

Reports

Reports are required at six month intervals, to be filed between the first and 10th day of January and July. Again, a separate report must be filed for each employer and must cover: any updates to the annual registration statement; total lobbying expenditures (categorized by office expenses, advertising and publications, compensation to others, compensated personal sustenance, lodging and travel, and other expenses); and an itemization (by recipient, amount and purpose) of each expenditure of $50 or more. In addition, any political expenditures (including campaign donations) or loans, gifts or honoraria to any public official, his staff or immediate family that either individually or in the aggregate total $50 or more, must be itemized by date, beneficiary, amount, and circumstances of the transaction. Any D.C. official who is compensated any amount by a registrant must be named and the nature of the employment explained, and each communication with an official related to lobbying activities must be described separately in the report. A registrant who does not file during any reporting period is presumed not to be receiving or expending funds required to be reported.

Preservation of records

All documents and accounts necessary to substantiate a disclosure report must be kept for five years from its filing date, and shall be made available for inspection by the board upon reasonable notice.

Limitations on gifts and other restrictions

No registrant or anyone acting on his behalf may give "gifts" (defined as given for the purpose of influencing official action) to an official or staff member that exceed $100 in the aggregate in any calendar year. In addition, the law specifies that, "No public official shall be employed as a lobbyist while acting as a public official."

Personal financial disclosure

Each candidate for public office and each public officer (within one month of election and annually thereafter), must file a personal financial statement with the Board of Elections and Ethics. The report must include the amount and source of all income, reimbursement and gifts (aggregating more than $100); the identity of all assets over $1,000; the identity and amount of all assets over $1,000, security or commodity transactions aggregating more than $5,000 in a calendar year; any real-property transaction (other than of a personal residence) over $5,000, and the amount of each tax paid during the preceding calendar year.

Records of such disclosure are to be maintained by the board for at least seven years after disclosure. Annually the board is to disclose publicly the candidates and officials that have complied with the personal-disclosure requirements.

In 1976, the city council amended the law to require that all D.C. government employees earning $29,818 or more also file statements disclosing their personal finances.

Penalties

Willful and knowing violation of the law (other than simply the late filing of registrations or reports) carries a fine of up to $5,000 and/or 12 months' imprisonment; in addition the Board may prohibit a convicted violator from serving as a lobbyist for three years from the date of conviction. A civil fine of $10 a day (for up to 30 working days) is imposed for each day of delinquent filing unless good cause is shown. Any D. C. resident may bring suit in D.C. Superior Court directing the board to enforce the lobbying code, and may receive attorneys' fees if he fully or partially prevails.

(See: D.C. Code, Sec. 1-1171-1177.)

FLORIDA

In its last session the Florida legislature soundly defeated attempts to consolidate its separate house and senate rules on lobbying into more forceful statutory form. When they reconvene next April, legislators will face renewed efforts by Common Cause and other "open government" groups to make lobbyists disclose how much they spend on such specific items as entertainment and mailing expenses, and to extend coverage to lobbying of the executive branch. A commission re-writing the state's constitution is also giving the subject consideration.

Until recently the two sets of lobbying disclosure requirements (Senate Rule 9; House Rule 13) were much the same. But amendments to the house rule in April have instituted slight variations between them in reporting requirements and penalty provisions.

Secretary of the Senate; Clerk of the House

Lobbyists must register and file reports with the legislative body that they intend to lobby—or with both if that is the case. The Senate Committee on Rules and Calendar, and the House Committee on Standard and Conduct have responsibility for regulating "the ethical conduct of lobbyists," and issue advisory opinions in response to a set of facts submitted by a lobbyist. Those opinions are published, with the requestor's name deleted, in the journal of the respective chamber. The secretary and clerk keep a compilation of the opinions, as well as an up-to-date list of lobbyists and copies of their reports.

An additional statutory provision, applicable to the legislature as a whole, empowers any committee to compel a witness to identify, in writing and under oath, on whose behalf he appears and whether any compensation is involved; the information would be transmitted to both the secretary and clerk and published in both journals. Falsification of such information is a second degree felony.

For registration and report forms, contact: Clerk of the House; Secretary of the Senate; State Capitol, Tallahassee, FL 32304. Phone: (904) 488-1157 (House); (904) 488-1521 (Senate).

LOBBYING DISCLOSURE

Who must register and report

The senate rule requires registration and reporting by any person who seeks, directly or indirectly, to influence the legislative process, whether or not any compensation is received or expenditures made. The house rule does not cover "volunteer" lobbyists who are neither compensated, nor reimbursed any expenditures. The senate rule exempts those whose lobbying is restricted to public appearances before a committee "on an isolated basis and without the intent to continue beyond a single legislative day," and extends that exemption to those who appear on behalf of a business entity with whom they are regularly associated, so long as they receive only reasonable and ordinary travel expenses in connection with the visit. The exemption in the house rule was changed in April to remove the "isolated basis/single day" restriction and to apply to appearances before individual legislators as well as house committees; however the exclusion in the house only holds when one acts solely in one's "individual capacity" and not on behalf of others.

Registration

Each lobbyist must file a sworn registration statement which is valid until terminated or until the end of a two-year legislative session. The statement must include: the legislative interest of the registrant and the expected duration of representation, a description of any "direct business association or partnership" with any legislator, and identification of the principal represented. Authorization by the employer is not required.

A separate statute passed in 1974 obliges any state employee whose official duties encompass lobbying (including appearances before a legislative committee) to register as a lobbyist, and record each visit to the legislature during business hours other than those made at the request of a committee or subcommittee chairman. (Executive or judicial branch employees whose positions are designated in their department's budget as lobbying-related still must register, but need not record each contact. Employees who fail to abide by these provisions may have deducted from their salaries an amount equal to their hourly wage times the number of unrecorded hours spent lobbying.

Reports

Under the senate rule lobbyists must file one report within 30 days of the close of a regular legislative session, listing all lobbying expenditures for the session as well as the sources of those funds, and a second report, by the end of the first week of every regular session, disclosing any interim or special session expense. (A senate

advisory opinion rendered in 1973 states that only those expenditures related to influencing senate action need be revealed in reports filed with that body.)

The amended house rule now specifies that a "statement of session expenditures" be filed by July 15 of each year (covering costs incurred between January 1—July 1), and that a "statement of interim expenditures" (covering July 2—December 31) be submitted by January 15. Personal lodging, sustenance and travel costs need not be reported in either report.

Limitations on gifts and other restrictions

Each legislator is required to report to the secretary of state, the source, purpose and amount of gifts from a single source whose value, either individually or in the aggregate, exceeds $25 in a year.

Personal financial disclosure

In 1976, Florida voters approved, by a 2-1 margin, an amendment to the state constitution requiring candidates and officeholders to disclose every source of personal income that exceeds $1,000. The petition drive to get the issue on the ballot was sponsored by Governor Reubin Askew.

Penalties

Other than those relative to state employees, the penalties for violation contemplated in the two rules include only reprimand, censure, or prohibition from lobbying—and then, only if the sanction is agreed to by a majority of either body after a full committee hearing. (Amendments to the house rule added the senate's alternative of censure of reprimand to an outright prohibition from lobbying, but allowed that the house "may" invoke such sanctions instead of stipulating, as the senate rule does, that they "shall" use them.

(See House Rule 9; Senate Rule 13; Florida Statues Chapter 74-161 (lobbying by state employees), and Chapter 11.05-06 (lobbyist appearances before committees).)

GEORGIA

In March a house rules subcommittee effectively blocked senate-passed lobbying disclosure legislation that would have expanded Georgia's registration-only law to oblige lobbyists spending over $100 a year to file three expenditure reports annually. In so doing, Georgia's legislature and secretary of state avoided, at least for the time being, having to reconcile a combined lobbyist registration and reporting requirement with a provision in the state's constitution that "Lobbying is declared to be a crime, and the General Assembly shall enforce this provision by suitable penalties." Until that provision is modified or removed completely (as part of a comprehensive revision of the constitution expected around 1978), legislators will probably remain reluctant to pass a disclosure law that would in effect compel self-incrimination.

Secretary of State

Registrations must be filed with the secretary of state, who is to organize them in a publicly available "docket of legislative appearances." Other duties include issuing identification cards to registrants, and periodically reporting their names to the General Assembly. All legislators share the responsibility of bringing suspected violations to the attention of each house's respective rules committee, whose chairman is to forward them to the appropriate officials. For registration forms, contact: Ms. Ann Adamson, Assistant Secretary of State, 214 State Capitol, Atlanta, GA 30334. Phone: (404) 656-2881.

LOBBYING DISCLOSURE

Who must register and report

(Note: "Lobbying" is defined in the Georgia lobbying statute as a "personal solicitation" that is "not addressed solely to the judgement" of a legislator, but the term—because it denotes illegal activity—has been removed from the active provisions of the law. Instead, those who perform what might elsewhere be labelled "lobbying activities," are referred to as "representatives" if they work on behalf of one employer, or as "registered agents" if they have a multiple clientele.)

Registration is required of those who represent—with or without compensation—others for the purpose of influencing legislative action through direct or indirect means. The registration requirement would not affect persons whose legislative activities (be they personal contacts or publicly given testimony) are undertaken solely on their own behalf.

Registration

Registration is valid for one regular or extraordinary session of the legislature, and must be accompanied by a $5 fee. No employer authorization is necessary. The registration statement must include the name of the employer. Each registrant is issued an identification card which he must carry whenever in the state capitol.

Reports

There are no reporting requirements in the lobbying law.

Limitations on gifts and other restrictions

The law prohibits compensation arrangements contingent upon the outcome of a legislative matter, and forbids registrants from entering either legislative chamber to privately discuss pending matters.

Penalties

"Lobbying" as prohibited by law and the state constitution carries imprisonment of from one to five years. Violation of the other sections of the lobbying code constitutes a misdemeanor.

(See: Georgia Code, Chapter 47-10 as amended.)

HAWAII

Hawaii was only one of two states—the other being Utah—that had no lobbying disclosure requirements prior to enactment of its present law in 1975. The lobbying code, with its broad definition of "lobbying activities," has not been amended since.

Clerk of House and Senate; Legislative Auditor

Lobbyist registrations and employer authorizations may be filed with any one of three offices: the clerk of the senate, chief clerk of the house or the office of information and youth affairs. (They are in Rooms 29, 35, and 442, respectively, of the State Capitol, Honolulu, Hawaii 96813.) Lobbying reports must be filed twice-yearly with the Legislative Auditor (Room 008). The Auditor's duties include the investigation of violations alleged in a complaint by any person, and the referral of such violations for prosecution.

For registration and report forms, contact: Clerk of the Senate (or House), Room 29 (or 35), State Capitol, Honolulu, Hawaii 96813. Phone: (808) 548-4675 (548-7843).

LOBBYING DISCLOSURE

Who must register and report

The law requires registration of those who "communicate directly or through an agent, or solicit others to communicate with any official in the legislative or executive branch, for the purpose of influencing any legislative or administrative action." An interpretation by the state attorney general concludes that a corporation, or other organization, as well as any agent or firm it hires to perform lobbying activities, is required to register as a lobbyist.

There are six categories of exemptions from the law's coverage: (1) individuals solely representing themselves (and who neither spend $100 or more in a quarter nor receive any compensation or reimbursement for lobbying, nor lobby as a part of regular employment); (2) any appointed public official or employee or (3) any selected official, acting in an official capacity; (4) legislative action urged through any regularly published newspaper or other mass media; (5) any attorney who only advises a client as to the construction or effect of proposed government action (provided he also meets the criteria stated in (1) above,) and (6) "any person who possesses special skills and knowledge relevant to certain areas of legislation . . . and who makes an occasional appearance at the request of the legislature or an administrative agency or the lobbyist," even if receiving compensation.

Registration

Registration statements, by a lobbyist or a lobbying organization, must be renewed one year from the date of filing, or amended within 10 days of any changes in the information supplied. The individual lobbyist's registration statement, to be accompanied by authorizations from each employer, must give the expected duration of representation, list each source of the lobbyist's compensation, and give the actual or predicted amounts of compensation and expense reimbursement. A registering organization must supply similar information.

Reports

A "Statement of Subject Areas, Expenditures, and Contributions," due on June 30 and December 31 of each year, must be filed by any registrant who either spends $100-plus in a calendar quarter, or receives *any* compensation for lobbying activities,

or "engages in lobbying activities as part of his regular employment whether or not he is directly compensated for such activities." The report should cover: identification of each beneficiary of lobbying expenditures above $25 in a single day, or aggregated above $150 during the six-month reporting period (as well as the amount of the expense); total expenditures, if above $300; and the name and address of anyone contributing $25-plus to the lobbyist during the reporting period, as well as the amount. (Membership dues, or other donations for other than lobbying purposes are excluded, as are campaign or ballot-issue contributions.) Legislative or administrative issues lobbied upon must also be categorized. ("Expenditures" as defined in the law do not include the costs of preparing written testimony or exhibits for a hearing, administrative overhead costs, nor expenditures on paid advertisements.)

Limitations on gifts and other restrictions

Compensation arrangements contingent upon the outcome of a legislative or administrative action are prohibited.

Penalties

Willful falsification of any statement required under the lobbying code, or willful omission of material fact, constitutes a petty misdemeanor.

(See: Hawaii Revised Statutes, Chapter 97; Information and Questions and Answers On Lobbyist Registration and Reporting Requirements (Revised June 1, 1976).)

IDAHO

Idaho's Sunshine Law for Political Funds and Lobbyist Activity Disclosure was a ballot issue in 1974; it passed by a vote of 78 percent. Groups that pushed for the law report that all legislative efforts to weaken it have failed "without exception." The two most notable alterations in its section on lobbyists was a 1975 change to require monthly reports of lobbying expenditures during a legislative session instead of weekly statements, and a change in its penalties which passed in 1976.

The law was also amended to exclude elected officials from its lobbying disclosure provisions after a 1975 attorney general's opinion had ruled that the statute as drafted applied to them as well.

Secretary of State

Registrations and reports are filed with the secretary of state, who has broad enforcement authority over the law. The secretary's duties include issuing rules and regulations and prescribing necessary forms and an instruction manual for lobbyists; making available to the public, and preserving for six years the information thus received; inspecting each statement within two days of receipt; investigating alleged violations "upon complaint by any person;" and reporting suspected offenses to the state attorney general. Beginning in 1977, the secretary's office is to publish annual summaries of lobbying registrations and expenditures. The attorney general issues advisory opinions responding to hypothetical or real sets of facts. The secretary must also report, weekly to each house while the legislature is in session, the names of lobbyists and employers, and the legislative subjects to be lobbied on.

For registration and reporting forms, as well as a summary of the Sunshine Law and a Reporting Manual for Registered Lobbyists, contact: Secretary of State, Boise, ID 83720. Phone: (208) 384-2300 (or call the "sunshine number" collect: (208) 384-2852).

LOBBYING DISCLOSURE

Who must register and report

The definition of "lobbying" in the Idaho law covers both direct and indirect activity geared to influence legislative action. Registration is required of those who attempt, "through contacts with, or causing others to make contact with, members of the legislature or legislative committees, to influence the approval, modification or rejection of any legislation by the legislature . . . or any committee thereof."

However, the law exempts from disclosure those who either: (1) limit their lobbying activities to public committee appearances; (2) report or comment upon legislative activity as members of the general news media; (3) are compensated no more than $100 (or whose proportion of regular employment salary related to lobbying does not exceed $100) during a calendar quarter; (4) are elected or governor-appointed state or local officials acting in their official capacity; (5) belong to and represent a bona-fide church on the sole issue of protecting freedom of religion, or (6) are employed by a corporation which has itself registered, and has designated one or more employees as official lobbying representatives who have themselves registered. (In the latter situation both the corporation and its registered lobbyists must report lobbying expenditures made by the exempted employees, and identify those who have authorized the spending of $50 or more in the aggregate for lobbying during a calendar year.)

Registration

A lobbyist must register before commencing lobbying or within 30 days of accepting lobbying-related employment—whichever is sooner—and renew such registration by January 10 of each year. Any changes in the lobbyist's employment status must be disclosed in an amended statement within one week. Each registration carries a $10 fee, and separate forms and fees must be provided for each employer (unless the registrant has been hired collectively to lobby on a common legislative issue.) The statement must reveal: the employer's business and the expected duration of representation; whether the registrant has employment functions other than lobbying; the custodian of lobbying records; and the general subjects of legislative interest by category. In addition, registrants who represent "non-business entities" (such as trade associations or other groups which are not principally set up as profit-making businesses, and which collected more than 10 percent of total receipts through contributions, gifts, or membership fees during the preceeding year) must list each of the entity's members or representatives whose contributions during either of the past two years, or obligated donations for the current one, exceeded $500.

Reports

All registrants must file disclosure reports—quarterly year-round, and monthly, while the legislature is in session. The reporting dates for lobbyists are as follows:

Report, Period Covered and Due Date

1st monthly: January—February 5.
2nd monthly: February—March 5.
3rd monthly: March—April 5.
4th monthly: April—May 5.
If the legislative session exceeds 90 days:
1st Quarterly January, February, March—April 30.
2nd Quarterly April, May, June—July 30.
3rd Quarterly July, August, September—October 30.
4th Quarterly October, November, December—January 30.

The information required by the quarterly and monthly statements is the same, except that the former must be signed by each of the lobbyist's employers in addition to the lobbyist himself. They must contain: total lobbying expenditures, apportioned among employers and by category (entertainment, food and refreshment, living accommodations, advertising, travel, telephone, office expenses, and other expenses or services); the amount, circumstances and recipient (if a public official) of each $50-plus expense; the amount of every expenditure "in the nature of a contribution of money or of tangible or intangible personal property" made for the benefit of a legislator; and the subject matter of proposed legislation, by category and by bill number (and by the particular section, if an appropriations measure) lobbied upon during the covered period.

Additionally, within five days of delivering any written or printed materials to the legislature, a committee or any legislator, a lobbyist must file three copies with the secretary of state.

Preservation of records

A lobbyist is required to preserve all documents, including accounts, bills receipts, books and other papers, necessary to substantiate the contents of a report for three years from the date of its filing. [The responsibility requires turning over such records to him.) The secretary of state may require the production of those records for inspection at any time during that period.

Limitations on gifts and other restrictions

In 1976, then-Governor Cecil D. Andrus issued Executive Order 76-5, an ethics code that prohibits state employees from accepting gifts aggregating over $25 in a calendar year from anyone subject to their official jurisdiction.

A list of "duties of lobbyists," included in the Sunshine Law, stipulates that they may not: attempt knowingly to deceive any legislator; work for the introduction of a measure in order to work subsequently for its defeat; knowingly represent an interest adverse to their employer's without first obtaining an informed consent; exercise any economic reprisal against a legislator because of that legislator's position on an issue; or accept any compensation arrangement contingent upon the outcome of legislative action.

Penalties

A new penalty structure was written into the lobbying code last year. There is a new late filing fee of $10 per day, which the secretary of state may waive if he

determines that the delinquency was not willful and that no purpose would be served by imposing such penalty. However, the waiver may not be granted if five or more days has elapsed since the violator received certified notification of his violation from the secretary and still has not complied; in that event, he may be fined up to $250 if an individual, and up to $2500 if a corporation. Other knowing and willful violations may be punished by up to six months' imprisonment, in addition to the $250 or $2500 maximum fines.

Prosecutions under the act carry a two-year statute of limitations. During that period any citizen of the state may seek injunctive relief through the appropriate district court, which may require that a written complaint first be filed with the secretary of state. The costs of litigation may be awarded to either party depending upon the outcome.

(See: The Sunshine Law for Political Funds and Lobbyist Activity Disclosure, Idaho Code 67-6617-6628; *Reporting Manual for Registered Lobbyists* issued by the Secretary of State; Governor's Executive Order 76-5 (on limiting gifts to public officials).)

ILLINOIS

A bill to strengthen Illinois's 1969 lobbying disclosure law died with the July 1 adjournment of the state legislature giving the statute an even chance at being modified in 1978. The measure, HR 1820, had passed the house 132-9 on May 20, after a massive lobbying and editorial-writing campaign by Common Cause, and the support of Governor James R. Thompson rescued it from burial in a subcommittee. But, the Senate Executive Committee to which the bill was referred failed to act on the proposal in time.

As originally introduced, the legislation would have established an independent administering authority and provided mechanisms for citizen-initiated complaints. A major effect of HR 1820 as passed by the house would have been to extend the lobbying law's coverage to attempts to influence executive branch officials as well as legislators.

After their legislative defeat, supporters of tougher lobbying controls changed tactics and scored a victory of sorts: a five-point "clarification" of the current law by Illinois Attorney General William J. Scott. As a result of Scott's December 12 advisory opinion, registering lobbying entities must identify every lobbyist-employee; law firms must list lobbying-related clients; expenses must be reported for attempts to influence "all aspects of the legislative process"; Lobbying costs billed to an employer must nonetheless be reported by the lobbyist, and those expenditures individually under $25, while not subject to itemization, must be grouped under the name of the official on whose behalf they were made.

Secretary of State

It is the duty of Illinois' secretary of state to collect lobbyist registration and reports on forms it prescribes, to preserve such information for three years from their filing date, and to maintain public registers of such information. Any violations of the state's lobbying code may be prosecuted by the state's attorney for the county in which the offense occurred, or by the state attorney general. For registration and reporting forms, contact: Index Division, Office of the Secretary of State, Room 220, State Capitol, Springfield, IL 62756. Phone: (217) 782-7017.

LOBBYING DISCLOSURE

Who must register and report

Registration and reports are required of any one who "undertakes to promote or oppose the passage of any legislation," and who either (a) does so either for compensation, or on behalf of someone else, or (b) does so as part of employment duties.

This broad definition, however, is tempered by a list of exemptions for: (1) those whose activity is uncompensated; (2) editorial comments urging legislative action that are disseminated through the general media; (3) professional drafting or advisory activities not accompanied by any urging of legislative action; (4) state employees who appear as legislative witnesses, or employees of the legislative branch; (5) employees of religious organizations who lobby only for freedom of religious practice, and (6) "persons who possess special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge would be helpful to members of the General Assembly when considering such legislation, and making an occasional appearance for a registrant at the written request of a member of the General Assembly even though receiving expense reimbursement for such occasional appearance."

Registration with the secretary of state is required before lobbying activities commence, and annually thereafter. Employer authorization is not required. The

statement must be accompanied by a photograph and must identify the employer and include a brief description of the legislative issues expected to be lobbied upon. Notice of termination of lobbying activities must be filed within 30 days.

Lobbying expenditure reports must be submitted (1) between April 1-20 and July 1-20 during those years in which the General Assembly is in regular session; (2) within 20 days of adjournment of any special legislative session, and (3) between January 1-20, covering a preceding year during which the General Assembly met either only part of the time or not at all.

The report must disclose all lobbying expenditures and "show in detail" those persons, including legislators, for whose benefit they were made. However, such reports need not include "reasonable and bone fide" costs that were made (1) in connection with a state commission, or other body on which the registrant serves; (2) for office overhead expenses, including "costs of mailings to members and ordinary mailing list, and cost of regular and routine research"; (3) for personal sustenance, lodging and travel, or (4) in connection with testimonials or "special designated purpose days to honor or to promote the candidacy of a legislator or candidate for the General Assembly." Expenditures individually less than $25 need not be itemized.

Personal financial disclosure

The Illinois Governmental Ethics Act of 1973 restricts legislators and other public officials from accepting compensation from sources other than the state, and attempts to prevent conflicts of interest on the part of these officials. Members of and candidates for the general assembly, office-holders in the executive branch, members of boards and regulatory agencies, individuals whose offices are subject to senate confirmation, holders of, or candidates for, judgeships and state employees receiving more than $20,000 per year must file personal financial holdings statements annually.

Required statements must include name and address of any practice or professional group of which the official is a partner, or which provided him more than $1,200 income in the preceding year; capital assets from which a gain of more than $5,000 was realized in the preceding year; names of any units of government that employ official other than this primary job; any gifts or honoraria over $500; and name of any lobbyist with whom the official conducts a close economic relationship.

Penalties

Individuals who violate Illinois' lobbying code are subject to fines of up to $1,000 and/or imprisonment from one to ten years; corporate violations carry stiffer fines of up to $10,000. An individual conviction automatically carries a prohibition from lobbying for compensation for three years from the date of conviction.

(See Illinois Revised Statutes, Chapter 63, Sections 171-182 on lobbying; Illinois Governmental Ethics Act of 1973, Illinois Revised Statutes, Chapter 127, 601, on personal financial disclosure.)

INDIANA

Indiana's 1915 lobbying code has been called "one of the worst in the nation" by the national president of Common Cause, for its failure to require any disclosure from the lobbyists themselves, or to mandate that reports detailing lobbying expenditures be filed prior to adjournment of a legislative session. Yet despite a high-powered lobbying reform campaign by Indiana's attorney general and secretary of state last year, major lobbying bills in both the senate and house were heavily amended, and ultimately did not pass.

Secretary of State

Registration and reports must be filed with the secretary of state, who issues a certificate of identification after collecting a $2 registration fee. A record of "legislative agents" and "legislative counsel" must be kept available for public inspection.

The state attorney general is authorized to prosecute violations upon information. For registration and report forms, contact: Secretary of State, State Capitol, Indianapolis, IN 46204. Phone: (317) 633-6531.

LOBBYING DISCLOSURE

Who must register and report

Registration and reporting is incumbent upon those who directly or indirectly employ persons to "promote, advocate, or oppose in any manner, any matter pending, or that might legally come before the general assembly." (A 1971 attorney general's opinion construes "employment" in this case to mean "any compensation, given directly or indirectly.")

Registration

Anyone required to register must do so within one week of employing a lobbyist; such registration must be renewed (along with a new $2 registration fee) every three months, and for each new legislative session. In addition, notification of any changes in the information supplied in the statement must be made within one week of the time those changes occur. The contents must include: identification of the employer, the nature of its business, and "the exact subject matter to be promoted or opposed by the lobbyist." In addition the statement must indicate whether the lobbyist will act as a "legislative counsel" ("who appears before committees of either house or who promotes or opposes legislation by written brief or statement"), as a "legislative agent" ("who promotes or opposes legislation by any other means including personal contact with a legislator or others"), or as both.

Reports

Within 30 days of adjournment of the general assembly, the employer of a legislative counsel or agent must file a statement of lobbying expenses, showing "a complete and detailed statement of all expenses paid or incurred" by the registrant, including all lobbying-related salaries.

Limitations on gifts and other restrictions

NOTE.—A different set of restrictions and disclosure requirements apply to groups of two or more persons who want to lobby as "unincorporated associations." Before doing so, they must appoint a treasurer and verify the appointment in writing to the secretary of state (such person must be an Indiana resident). No funds may be contributed to, or collected or spent by such organization until it has appointed its treasurer, and then only if the funds pass through his jurisdiction. Then, within one week of such appointment, the treasurer must file a statement naming each and every officer of the organization (and each member, if the membership comprises public employees) as well as each legislative representative, and the exact subject matter to be lobbied upon. In addition the treasurer must report to the secretary of state, within 30 days of the legislature's adjournment, the identities of every contributor and the amount contributed, and the recipients of any amount of expenditure, for lobbying purposes.

A different restriction provides that persons not residing within the state, or foreign corporations or other groups that employ lobbyists, must post a $1,000 surety bond with the secretary of state in order to insure their compliance with the code's reporting requirement, within one week of employing legislative representation.

Compensation arrangements contingent upon the outcome of a legislative matter are prohibited.

The original fifty-two-year old statute contained a flat prohibition against lobbying for compensation by any state or local public employee, or by persons employed by a political party's state central committee. In March of this year the legislature amended that prohibition to permit such persons to lobby as part of their official duties (although they may still not accept lobbying-related compensation from other parties.)

Personal financial disclosure

Candidates and officeholders are required to disclose their personal finances under a 1974 statute enforced by a state ethics commission. Reports of personal financial interests are required from statewide officers by Feb. 1 of each year. Candidates for and holders of these offices must file financial statements prior to registering their candidacy. Reports include location of real property valued at over $5,000 or at 10 percent or more of the official's net worth; name of employer (other than the state) and employer of spouse; name of any sole proprietorship or professional practice owned by the official or spouse; partnerships in which the official or candidate is involved; any corporation directorships held or corporate stockholdings over $10,000.

Members of the general assembly are similarly required to list personal financial holdings. Within seven days following the first legislative day each January, they must file statements with the clerks of their respective houses, listing financial holdings mentioned in the preceding paragraph, names of anyone who provided a gift of cash in the past year or an item worth more than $4,100 and names of lobbyists who hold positions in the same firm as the legislator.

Penalties

Violation of any provisions of the lobbying code constitutes a felony punishable by a fine between $200 and $1,000, or imprisonment for 3 months to a year.

(See: Indiana Code of 1971 Citation 2-4-3 on lobbying; 2-2.1 and 4-2 concerning financial disclosure, ethics and conflicts of interest.)

IOWA

Iowa has separate house and senate lobbying rules—both substantially amended this year—that differ in numerous respects.

I. Senate

Secretary of the Senate

Under the "Senate Rules Governing Lobbyists," registration and periodic reports are made with the secretary of the senate, who prescribes the proper forms and who may request further clarification from a lobbyist. By the 25th day of each month, the secretary must submit to the senate ethics committee the names of those lobbyists and senators who failed to file the required reports. The committee may compel a full hearing and, upon finding a violation, recommend to the senate that it (by a two-thirds vote) suspend the offender from lobbying. Additionally, sworn written complaints alleging violation may be filed by any member of the general assemble with the chairman of the ethics panel. For registration and report forms, contact: Secretary of the Senate, State Capitol, Des Moines, Iowa 50319. Phone: (515) 281-5307.

LOBBYING DISCLOSURE

Who must register and report

The senate rules define a "lobbyist" as anyone who (1) is paid compensation, (2) makes direct expenditures benefiting senators, (3) regularly represents an organization, or (4) is a Federal, state or local government official, acting in an official capacity to encourage the passage, defeat or modification of legislation.

Exempted from the definition, however, are (1) persons who officially represent a political party whose gubernatorial candidate got more than two percent of the total vote in the preceding election; (2) news-media personnel acting in that capacity; (3) public officials who submit testimony or answer legislators' inquiries, but who do not otherwise actively lobby; (4) all elected public officials, and (5) those who "exclusively represent their own interest" and who are not compensated to lobby.

Registration All lobbyists, whether or not they intend to spend any funds, must register on or before the day their lobbying begins, and renew their registration annually. Termination of lobbying statements is necessary if lobbying activities cease prior to the end of a year, and any changes must be included in a supplement within ten days. Alternatively, a joint registration may be filed by two or more lobbyists who "are associated together or consistently work together in all of their lobbying."

In all cases the registration must include: identification of the lobbyist's employer(s), the general subjects of legislation (and bill numbers, if known) to be lobbied upon, a detailed description of any fee arrangement contingent upon the outcome of legislation, and an indication of which of such "lobbyist" categories the registrant falls into. If the registrant expects *not* to expend any funds—making him a so-called "Rule 5 lobbyist"—he must include notification to that effect.

However, if he later anticipates expenditures, he must re-register as a "Rule 4 lobbyist," and file periodic disclosure reports.

Any Federal, state or local government officials seeking to represent the official positions of their units, must first present a letter of authorization from their department heads. Those officials who plan to lobby in opposition to their unit's official position must so indicate on their registration.

Reports

(A) By the 20th day of each month, "Rule 5" lobbyists must separately or jointly file a short statement indicating that no lobbying-related expenditures were made during the preceding month. (B) Rule 4 lobbyists, on the other hand, must submit monthly disclosure reports including (1) the total of all lobbying expenditures made directly upon senators, with subtotals for food and refreshment, entertainment, subsidized travel, recreation, lodging, and all other costs; (2) identification of any senators (as well as senate candidates, or immediate family members) who received more than $5 in expenses or any honoraria from the reporting lobbyists during the previous month, and (3) a breakdown of those expenditures by each employer's pro data share. Additional monthly reports are required if the lobbyist has split an expenditure, or joined in lobbying activity, with another party, in which case that report must identify all legislative recipients of lobbying expenditures, describe the purpose of each, and aggregate the amounts by legislator. And still another state-

ment is necessary if a lobbyist holds an event for senators, candidates or their families—in which case the names of all attending senators must be provided, and total costs averaged on a per-senator basis.

If a lobbyist expects expenditures upon any senator will exceed $25 during any monthly period, then he must notify that senator, who may elect to reimburse the lobbyist for all or part of those costs. The reimbursed portion need not be reported.

Senators themselves must also report the purpose and source of all items in excess of $5 received in any one month from a lobbyist, including food and refreshment, entertainment, travel, and material goods. (It is not necessary to give the amount of each item, however.)

Year-end reports also are required of Rule 4 lobbyists by not later than January 20, and they must give all direct and indirect expenses in relation to lobbying, both in toto and categorized by food and refreshment, entertainment, travel for senators, recreation, lodging, advertising, or postage and printing.

Limitations on gifts and other restrictions

The senate's lobbying rules prohibit a lobbyist from spending more than $50 in the aggregate during a year on a senator or immediate family. This limitation applies personally to the lobbyist if no pro rata share is assigned each employer; otherwise, it applies to each employer separately. Likewise, the $50 limit would have to be shared by more than one lobbyist working for a single employer. If a lobbyist anticipates exceeding the $50 ceiling, he must notify the affected senator, who may not "solicit or knowingly accept" the excess. Lobbyists and their employers may also not allow a senator to make use of their charge accounts, make contributions nor pay membership dues on a senator's behalf, nor offer "economic or investment opportunity or the promise of employment" contingent upon his actions. Anyone who is lobbying—including elected state officials but not the governor, lieutenant governor and house members—may not go upon the senate floor while the body is in session. Honoraria received by a senator may not exceed the actual expenses involved, plus "a reasonable and customary charge for speaking."

Penalties

Any lobbyist who fails to make a monthly report is considered to have voluntarily cancelled his registration and may not lobby again until he has re-registered with the secretary and submitted all delinquent reports.

II. House

The House Code of Ethics governing lobbyists differs from its senate counterpart in the following main respects:

Bullet as amended last March, the house code now differentiates between "regular lobbyists" (who seek to influence legislation through direct contact with one or more house members, on at least 10 occasions per month), and "short term lobbyists" (who make fewer than 10 contacts and lobby on a non-regular basis), and prescribes an abbreviated set of reporting obligations for the latter.

Both kinds of lobbyists must register with the Chief Clerk of the House, unless they are (1) designated representatives of a political party whose gubernatorial candidate received more than 2 percent of the vote in the last election; (2) news-media personnel gathering news; (3) Federal, state or local government employees making "required or requested" official appearances, or (4) constituents of the particular legislator they are lobbying.

Registration required of "regular lobbyists" demands information similar to that required of all lobbyists by the senate lobbying rules. However, "short term lobbyists" may file registration statements which need to give only brief identifying information about the organization he represents, the docket numbers of the bills to be lobbied upon, and the position taken on particular legislation.

Reports are required from all lobbyists who make lobbying expenditures by the 20th of each month following the month during which the legislature met, and by January 20 to cover all out-of-session months. The statements must name those representatives or immediate family members who benefited from over $25 in expenditures during the reporting period, and give subtotals for food and refreshment, entertainment and travel provided for representatives. A separate report must be filed for each employer on whose behalf expenses were made, except that, in the event of no expenses, a single abbreviated statement may suffice.

The house lobbying code prohibits fee or bonus arrangements between lobbyist and employer that are contingent upon the outcome of a legislative matter. There is a $25 limit on the amounts that may be spent to benefit house members. There are similar constraints upon the use of a lobbyist's charge card, or the offering of an "economic or investment opportunity."

Special note: Last December, Iowa's attorney general handed down an interpretation of the state's just-revised criminal code which, if taken literally, would give the state some of the strictest controls in the country on valued transactions between public officials and private citizens. That new law (Supplement to the Code of Iowa, Subsections 722.1 and 722.2) provides that any person "who offers, promises or gives anything of value or any benefit to any person who is serving or has been elected . . . (or) appointed . . . to serve in a public capacity . . . with intent to influence the act, vote, opinion, judgment, decision or exercise of discretion of such person in such capacity" commits a class D felony carrying imprisonment for up to five years and/or fines as high as $1,000. Conversely, any official who "shall solicit or knowingly receive any promise or anything of value or any benefit given with the intent to influence" in the same manner would be guilty of a class C felony punishable by up to 10 years in jail and/or $5,000 in fines.

Legislative efforts to modify the antibribery provisions before the legislature adjourned in the spring were launched without any assurance of success.

(See: Senate Rules Governing Lobbyists, and House Code of Ethics, both as amended, on lobbying disclosure; Supplement to the Code of Iowa, Subsects. 722.1 and 722.2, on bribery.)

KANSAS

Kansas' 1974 lobbying statute suffers from vague language and enforcement problems, according to officials in the state's Governmental Ethics Commission which administers the law. The Commission recommended about ten substantive changes that would toughen the law, but with only meager legislative results.

Kansas Governmental Ethics Commission

Enforcement of a variety of political reform laws, including lobbying disclosure, campaign finance and public official financial disclosure, is the responsibility of the state's Governmental Ethics Commission. The commission has issued about a dozen rules and regulations, and over 25 advisory opinions to help clarify the provisions of the lobbying statute. A panel of 11 appointed members, it may subpoena witnesses and documents in carrying out its investigative duties. Hearings must be public, and the parties involved allowed legal counsel and to call and cross-examine witnesses. Reports of apparent violations are submitted to the attorney general for legal action; however, if they involve an incumbent legislator, they must be forwarded also to the applicable legislative branch, and if they involve a judge, to the state's supreme court.

Actual lobbyist registrations and reports, however, must be filed with the secretary of state, who must keep open records of those statements indexed by registrant and employer. The secretary's office issues identification badges to properly registered lobbyists. For registration and report forms, contact: Secretary of State, Statehouse, Topeka, KS 66612.

Copies of relevant rules, regulations and advisory opinions can be obtained from the Kansas Governmental Ethics Commission, 109 West 9th Street, Topeka, KS 66612. Phone: (913) 296-4219.

LOBBYING DISCLOSURE

Who must register and report

The statute gives "lobbying" a broad, three-pronged meaning, embracing: (1) attempts to influence legislative action or inaction; (2) attempts to affect the adoption or non-adoption of administrative rules and regulations (other than through the mere communication of factual material, or the preparation of proposed or recommended rules), or (3) the entertaining of any state officer or employee (except as part of bona fide business or personal entertaining) which involves an expense of more than $100 in any calendar year for hospitality, honoraria, gifts or other payments benefiting the official, if the person making the expenditures either has a case pending before the official's agency, or is representing someone who does.

"Lobbyists" are further defined as those who either (1) are employed in "considerable degree" for lobbying; (2) "are formally appointed as the primary representative" of someone else, to "lobby in person (requiring physical presence) on state-owned or leased property," or (3) spend more than $100 in the aggregate (exclusive of personal travel or sustenance) on lobbying during any calendar year.

The statute provides for five exemptions from the above for: (1) state officials acting in their official capacity; (2) employers of registered lobbyists (so long as the employer's names are included in the lobbyist's registration statement); (3) nonprofit organizations that are classified under section 501 (c)(3) of the Internal Revenue Code, are interstate in their operations, and have as their primary purpose nonpartisan public affairs research disseminated to the general public; (4) any

judicial branch official, and (5) any appointed member of a state commission, advisory council or similar body who receives no payment (other for personal expenses) and who is acting in that official capacity.

Registration

Every lobbyist so defined must register with the secretary of state doing any lobbying, and renew his statement at the beginning of every year during which his lobbying continues. A $10 registration fee is required—to be paid only once annually by a lobbyist, although he must file separate registration forms for each employer by whom he is compensated. The information supplied must include an indication of which "lobbyist" definition the registrant falls under, whether legislative and/or administrative executive branch lobbying will be involved, the subject-areas (or specific bill or rule designations, if available) of interest, and the method by which compensation will be determined. If a lobbyist undertakes to represent additional employers, he must file a new form to that effect; if, on the other hand, he wishes to terminate his lobbying activities, a notice of termination should also be submitted. When the registration indicates the possibility of legislative lobbying, the secretary of state will forward copies of the statement to the secretary of the senate and chief clerk of the house.

Reports

Reports of lobbying expenditures are mandated to cover the months of January, February, March and April, and for the periods May 1–June 30, July 1–Sept. 30, and Oct. 1–Dec. 30, respectively. They are due by the 10th day of the subsequent month, from lobbyists who during the respective reporting period either (a) made aggregate lobbying-related expenditures of $50 or more to any one vendor or other person, (or whose employer has made such expenditures), or (b) gave gifts, honoraria or other payments totalling $10 or more to any state officer or employee, (or whose employer made such payments). Otherwise, no report need be filed.

The statement must enumerate each such payment over $10, including its recipient and its purpose, and list the aggregate amount of expenditures above $1 made by category (food and beverage/hospitality, gifts and other payments, mass-media communications, and other reportable expenditures). "Expenses of general office overhead" (including the costs of newsletters and the like) are excluded.

Limitations on gifts and other restrictions

The state's lobbying statute prohibits lobbyists from offering or giving any financial benefit to a state official with an aggregate value of $100 or more, "with a major purpose of influencing such officer or employee in the performance of official duties or prospective official duties." (Hospitality in the form of food or beverages, campaign contributions, and commercially reasonable commercial transactions are presumed not to be so contingent, unless known to be otherwise.)

Other prohibited relationships between lobbyists and state officials include paying commercially unreasonable compensation or fees for services rendered or property transacted; and employing an official in a representation case "in order to obtain improper influence over a state agency." The prohibitions apply equally to relationships with candidates for state office.

Personal financial disclosure

Among those officials required to submit statements of personal financial holdings are executive branch officials, elected state officials, legislators, candidates for the legislature, and state employees receiving over $15,000 per year—excepting teachers and appointees subject to senate confirmation. Statements are due January 31 of each year, and should include identification of any venture in which an official or spouse have either a minimum 5 percent or $5,000 interest; a description of taxable income totalling over $1,000 from any business or businesses, or of gifts or honoraria from any source (other than a relative) worth more than $500; and the holding of any corporate directorships. The statute specifies that an official "has a substantial interest in," and therefore must also disclose, any person or firm whose dealings with another firm result in his receiving fees or commissions at or above $1,000.

Penalties

"Unlawful lobbying" (lobbying without being registered, or while reports are delinquent), and "false lobbying" (filing false or incomplete disclosure information) are Class B misdemeanors. However, violation must be intentional to warrant prosecution.

(See: K.S.A. 1975, Supp. 46; Governmental Ethics Commission Permanent Rules and Regulations 19-60 through 19-63, and advisory opinions.)

KENTUCKY

Three separate attempts in the last general assembly to make Kentucky's lobbying code more specific all failed, leaving the statutt unchanged for at least 15 years. The law's constitutionality was upheld in a 1929 Kentucky Court of Appeals case.

State attorney general

Administration and enforcement of the Kentucky lobbying code are vested in the state attorney general, who must keep up-to-date lobbyist registrations in a public "Docket of Legislative Counsel or Agents Before Committees." The attorney general issues formal "administrative opinions" of general interpretation, and informal "miscellaneous letters" to clarify the law's meaning in specific cases. For registration and report forms, contact: Office of the Attorney General, Frankfort, KY 40601. Phone: (502) 564-7600.

LOBBYING DISCLOSURE

Who must register and report

Registration and periodic reporting is required of employers of lobbyists as well as the lobbyists themselves. The former are defined as those who are employed to influence legislation "which affects or may affect private pecuniary interests, as distinct from those of the whole people." (An interpretation by the attorney general has subsequently defined "employer" as including "any individual who upon request renders services as a lobbyist for some other person or organization, and receives either compensation and/or a reimbursement of expenses incurred while rendering those services.") The law has been interpreted to apply only to those who lobby during the legislative session; no other exemptions are provided.

Registration

The registration process is initiated by a lobbyist's employer, who, within one week of arranging such employment, must make certain the lobbyist is listed in the attorney general's docket. It is also the lobbyist's duty to ensure that he is registered prior to actual lobbying, and to file a signed employer authorization within ten days of registration. Termination of the employment may be indicated in the docket by either party.

Registration information must identify lobbyist and employer and give the expected length of such employment, if known, and any special legislative subjects to which the employment relates. The employer is also responsible for making additions to the docket whenever such legislative subjects of interest change. Registration and employer authorization are valid for one regular or special legislative session.

Reports

Every person whose name appears in the legislative docket—thus, lobbyists as well as their employers—must file a statement of lobbying expenses within 30 days of the general assembly's admournment. Expenditures must be broken down into the following categories: salary or other compensation, room, meals, transportation, office expenses, and other costs.

Limitations on gifts and other restrictions

Other Kentucky statutes require state legislators to make public disclosure to the Kentucky Board of Ethics if they maintain a close economic association with persons who lobby for compensation, and to limit their acceptance of compensation from private sources. Compensation arrangements conditioned upon the final outcome of a legislative matter are prohibited.

Penalties

Lobbyist-employers who fail to register or report as required are subject to a minimum fine of $1,000 for a first offense, and up to $5,000 and/or forfeiture of corporate charter, for each subsequent violation. Violations by lobbyists are punishable by a fine not exceeding $5,000 and/or five years' imprisonment.

(See: Kentucky Revised Statutes 6.250—6.320 and 6.990.)

LOUISIANA

Louisiana's 1972 lobbying disclosure statute is one of only a handful that do not compel periodic reporting of lobbying expenditures by lobbyists or their employers.

Secretary of the Senate; Clerk of the House

Lobbyists must register with both the secretary of the senate and the clerk of the house, who are responsible for compiling such information in looseleaf form open to any legislator. For registration and report forms, contact: Secretary of the Senate

(or the Clerk of the House), State Capitol, Baton Rouge, LA 70804. Phone: (504) 389-5061 or (504/389-2137 for the clerk).

Who Must Register and Report Registration is the obligation of anyone who "engages himself for pay or for any consideration" to influence legislative action, either directly or indirectly.

The requirement would exclude, however, persons who merely appear before legislative committees, are public officials acting in their official capacities or are media personnel engaged in news gathering and dissemination to the general public.

Registration

All lobbyists must file notarized registration statements annually with the clerk of the house and secretary of the senate, and pay a $10 registration fee. The registrant must identify his employer, as well as by whom he is to be compensated, give the expected duration of such employment, attach a recent photograph, and list any additional client-organizations on whose behalf he will lobby.

Limitations of gifts and other restrictions

Louisiana's Code of Ethics provides that no state official may receive private compensation for attendingto an official matter, or for "drawing substantially on official data or ideas which have not been made part of the body of public information," on behalf of a private sector party. An official also cannot receive a finder's fee for directing anyone toward state business, and is prohibited, for two years from the end of government employment, from either going into a business which is to receive privately-awarded state contracts, or assisting in any private transaction related to former public employment.

Penalties

Violations of the lobbying code are a misdemeanor, punishable by a maximum $500 fine and/or six months' imprisonment.

(See: Louisiana Revised Statutes 24:51—24:55 on lobbying; Title 42, Chapter 15 on Ethics.)

MAINE

Late in 1975, Maine's legislature passed a package of ethics laws—and inadvertently repealed the state's lobbying disclosure code in the process, leaving room for the tougher Lobbyist Disclosure Act to be passed in April of 1976.

Secretary of State

The secretary of state's responsibility for administering the lobbying code includes the duties to prescribe registration and reporting forms, maintain an up-to-date docket of lobbyists and lobbyist-employers, and preserve those records for four years from the date of their submission. The state attorney may take enforcement action upon the secretary of state's request.

For registration and report forms, contact: Secretary of State, State Capitol, Augusta, ME 04333. Phone: (207) 289-3501.

LOBBYING DISCLOSURE

Who must register and report

Registration is required of "lobbyists," who must be either "specifically employed," or spend more than eight hours in a month as part of regular employment duties, to communicate "directly with any official in the legislative branch for the purpose of influencing any legislative action, when reimbursement for expenditures or compensation is made for such activities."

The term "lobbying" specifically does not include appearances before a legislative committee relating to matters before it, written statements submitted to such a committee, or communications made in response to a legislative official's request.

Registration

Lobbyists and their employers must register jointly, and not later than seven business days after commencing lobbying. The statements, which expire each December 31, must include the nature of the employer's business and the basis on which the lobbyist's compensation will be measured (or the exact amount, if known). A registration fee of $15 (subject to change by the secretary of state) is assessed.

Reports

(1) Lobbyists must file a report by the 15th day of the month following every month during any part of which the legislature met in session. Those reports must update the information contained in the registration statement, and additionally

give the lobbyist's compensation for the preceding month; total monthly expenditures, and the amount expended for the direct benefit of one or more legislators (giving the name of any official on whose behalf aggregate expenditures during the month exceeded $25); and a detailed list of all legislative items lobbied upon and the precise amount of related compensation or expense reimbursement, spent relative to any single item, when above $1,000. Amendments to the law passed in 1977 require that compensation for "the preparation of documents and research for the primary purpose of influencing legislative action," also be reported.

(2) A separate, post-legislative session report, is required of both lobbyist and employer, requiring a cumulative re-statement of the monthly report information.

(3) Lobbyists and their employers must additionally file an annual disclosure report, within 30 days following the end of any year in which the lobbyist was registered, restating the same information for the preceding 12 months.

Limitations on gifts and other restrictions

Fee arrangements conditioned upon the disposition of any legislative matter are prohibited, as are efforts to instigate legislative action in order to, later, support or oppose the matter for compensation.

Personal financial disclosure

Members of the legislature are required to file statements disclosing their personal finances by the close of the second week in February each year. Statements must reveal each source of income (including those of spouse and dependent children) in excess of $300 in the preceding year. Income received in-kind, including transfers of property, options to buy or lease and stock certificates must also be reported. However, the source of the income is identified in general terms, i.e., "income from investments—auto manufacturing," rather than specific terms—stock dividends from the General Motors Corporation. In addition, lawyers must identify their "major areas of practice" and if associated with a firm, the law firm's major areas of practice must also be identified. (The Ethics Commission has defined "major area" to constitute 20 percent or more of the attorney's income.)

Penalties

Knowing and willful falsification or incomplete filing of information constitutes perjury and is punishable accordingly. Failure to file a report, or engaging in any of the prohibited lobbying activities stated above, can result in a maximum fine of $1,000 and/or 11 months' imprisonment.

(See: Maine Revised Statutes Annotated, Chapter 15, Title 3, Sections 311-322.)

MARYLAND

Maryland's lobbying statute was written in 1970, and almost completely re-written in April of 1977. The latest version (which became effective last July) extended registration and reporting requirements to lobbyists who attempt to influence executive branch decisions, and those who exclusively use grassroots, or indirect, lobbying techniques in soliciting others to contact officials. It also provides for semiannual reporting of expenditures, and strengthens the state attorney general's enforcement capabilities. A "sunset" provision in the new lobbying code requires that it undergo legislative review or be automatically repealed as of July 1, 1980.

Maryland Public Disclosure Advisory Board

Under the new statute, the state's former Financial Disclosure Advisory Board gained oversight of lobbying, and became the Public Disclosure Advisory Board. The Board consists of five members (two appointed by the governor, two by the president of the senate, and two by the speaker of the house), each holding four-year terms coextensive with that of the governor, and with the possibility of reappointment. Its duties involve prescribing necessary forms, issuing rules, regulations and formal advisory opinions, and investigating alleged violations (although the law does not give it subpoena power in conjunction with such inquiries.)

The secretary of state collects all statements filed by lobbyists and legislative agents, and must keep them publicly available for two years from their receipt. Additionally, the secretary must make a compilation of total lobbying expenditures, by category, for each six-month reporting period. He must notify any public official who is identified in a lobbyist's report, within 30 days of the report's being filed, and keep that report confidential for another 30 days, during which the official may file a written protest to the inclusion of his name.

The governor may require a lobbyist to file additional reports to those required by law, or compel their submission before the specified deadline dates

After receiving a complaint of an apparent violation, the state attorney general must notify the alleged violator 15 days before seeking an injunction against him

(but may not seek an injunction if the offender seeks an advisory opinion on the matter from the Disclosure Board, and then complies within 30 days of receiving that opinion).

The state comptroller must withold any public compensation from a person against whom such an injunction is issued, pending full compliance with the lobbying code.

For registration and report forms, contact: Secretary of State, State House, Annapolis, MD 21404. Phone: (301) 269-3421.

LOBBYING DISCLOSURE

Who must register and report

The new Maryland law defines a "lobbyist" as anyone who communicates in person with any official of the executive or legislative branches "with the purpose of influencing any legislative action," and who either spends at least $100 (not counting personal travel or sustenance), or is compensated at least $500 (either in full, or as a pro rata share of over-all employment compensation) during a reporting period for that purpose. The new law also applies to "executive branch lobbyists," defined as those who spend $75 or more during a reporting period "on an official in the executive branch for meals, beverages, special events or gifts in connection with, or with the purpose of, influencing executive branch activity."

Registration is required of (a) lobbyists and executive branch lobbyists so defined; (b) those who spend $500 or more in a reporting period to compensate one or more lobbyists (when such expenditures may not all be covered in the lobbyist's own reports); or those who spend $2,000, "including postage, in a reporting period for the express purpose of soliciting others" to lobby.

Exempted from the registration and reporting obligations, however, are persons whose governmental activities are limited to (1) professional drafting or counseling services, with no direct or indirect contact with the officials involved; (2) committee appearances at a committee's invitation or request; (3) activities within the scope of a state or local official's public duties; (4) news-gathering or dissemination, or editorial activities; (5) committee appearances made by an unregistered party at the request of a registrant (provided the witness so identifies himself); (6) activities to protect religious freedoms that are conducted by bona fide religious organizations; (7) lobbying on behalf of counties and municipalities, and (8) compensation or lobbying expenditures made through persons who are already registered.

Registration

Those required to register must do so within five days of commencing lobbying activities, and by January 10 of each year thereafter, until lobbying ends. A written employer authorization must accompany registration, and separate registration statements must be filed for each employer. The registration statement must identify in full the registrant and his employer, and designate the legislative or administrative matters (by formal designation, if known) on which lobbying is expected to occur. A notice of termination must be given within 30 days after lobbying ceases.

Reports

Two reports are required each year from those registered, for each employer from whom they receive compensation. The first, due May 31, covers the period from November 1–April 30: the second, due November 1, is for the period May 1–October 31. These reports must update the information provided in the registration, and aggregate lobbying expenditures by: total compensation paid to the registrant and his staff; office expenses; professional or technical research and assistance; publications which "expressly encouraged" persons to communicate with officials in the legislative or executive branch; fees paid to witnesses; food and drink for officials or their immediate families; special events intended for executive branch officials or for all the members of either legislative body or of any standing legislative committee; gifts to officials or their immediate families, and other expenses. Reports must also name any official (or immediate family member) who received gifts from a single source totalling $75 or more during the reporting period. Gifts in any one day which do not exceed $15 are not counted toward the total; however once the $75 amount is passed, each gift of $10 or more received thereafter must be itemized by date, beneficiary, amount or value, and nature. The law stipulates that the governor may require registrants to file additional reports.

Preservation of records

Those who file reports are obliged to preserve all records necessary for substantiation, for two years from the filing date, and to make those records available to the advisory board upon request.

Limitations on gifts and other restrictions

Compensation arrangements contingent upon the outcome of "any proposed legislation, or upon any other contingency connected with any action of the General Assembly," are prohibited.

Personal financial disclosure

Certain candidates and officeholders are required to submit to the secretary of state yearly statements of personal financial holdings by April 15, detailing real property owned in the state; interests in any corporation, all directorships held by the candidate or officeholder; all existing liabilities; and any members of the immediate family employed by the state. Persons carrying on business with the state must also submit financial disclosure statements as well. Anyone carrying on public business and making a political donation must annually submit detailed statements listing all political contributions, names of government agencies with which their firm transacts business, and description and amount of business.

Penalties

Knowing and willful violators of the lobbying law are guilty of a misdemeanor, and subject to a fine of up to $1,000 and/or one year in prison. In cases of corporate violations, each officer or partner who knowingly participated in the offense would be subject to the same penalty.

(See: House Bill No. 464, amending Annotated Code of Maryland, Article 40, Sections 5–14A.)

MASSACHUSETTS

Amendments to the state's lobbying law, to require disclosure of gifts to state officials, are given a good chance of passage in some form by the Massachusetts General Court before the end of 1978. This year, the house and senate placed new restrictions on the post-government employment activities of their former members, and instituted comprehensive personal financial disclosure requirements for public employees.

Secretary of the Commonwealth—Division of Public Records

A Division of Public Records was set up in the Secretary of the Commonwealth's office to deal with administration of the Massachusetts lobbying law. The division is mandated by the law to keep an up-to-date alphabetical docket of registered legislative agents, assess a registration fee, issue lobbyist identification cards, prescribe the appropriate reporting forms, investigate all statements for completeness and notify delinquent persons of apparent violations. If, fourteen days after such notification, the matter is still not resolved, the division may refer the matter to the state attorney general, who shall investigate further and begin prosecution if warranted. Upon the attorney general's application, the state supreme or superior court may compel a violating party to file the necessary lobbying reports. If there is cause, the secretary of the Commonwealth may begin including a public hearing proceedings (including a public hearing) to disqualify a person from acting as a legislative agent until the end of third regular legislative session following such disqualification.

The Division of Public Records must also notify any public official names in a legislative agent's report as the beneficiary of meals, transportation or entertainment, of the nature, date and amount of the expenditure.

In enforcing the law, the division has relied heavily—and successfully, it says—upon the "weapon of embarrassment" to compel compliance. In one instance in 1975, the division used its authority to disqualify a legislative agent in an "extremely flagrant" case of noncompliance. In 1976, hearings focusing on a group of insurance industry representatives drew enough attention to bring about their compliance with no further state action. The Massachusetts media has been active in reporting perceived lobbying abuses.

"I tell [agents reluctant to cooperate] that we're not going to force anyone to register," said the division director, adding, "Ultimately, people have changed their minds."

LOBBYING DISCLOSURE

Who must register and report

The law applies to "legislative agents" who for "compensation or reward" act to "promote, oppose or influence" either legislation or any "standard, rate, rule or regulation . . ." The definition covers those who lobby "as part of their regular and usual employment," but not when the lobbying is "simply incidental" to other employment duties.

In addition, two interpretations by the attorney general have contended that telephone contacts with government officials may constitute "lobbying," and that

the individual members of a law firm who engage in lobbying must themselves register.

Not covered by the definition, however, are state or local government employees or officials acting in their official capacities; persons who merely appear before a committee or commission at the request of a majority of its members and duly record those appearances; and tax exempt, charitable organizations registered under section 501(c)(3) of the Internal Revenue Code.

Registration

Registration is a two-step process, for both the agent and his employer. Within one week of employing an agent, the employer must enter the agent's name in the official docket kept by the secretary of the Commonwealth; the agent himself must also enter his own name within 10 days thereafter. The information required at the time of registration (to be accompanied by a $35 fee) must include the business interests to be affected by the lobbying, the date of employment and its expected duration. Within the following 10 day period, the agent must furnish the secretary with an employer authorization and two photographs of himself.

Reports

Two reports per year are required from registered agents, their employers, and those organizations which do not employ an agent but which nonetheless spend a threshold amount on lobbying.

A. *Biannual agent reports.*—By July 15 (covering the period from January 1–June 30) and January 15 (covering July 1–December 31 of the preceding year), all agents must file itemizations of expenses that exceeded $35 on any one day, for meals, gifts, transportation, entertainment, advertising, public relations, printing, mailing and telephone. The name of each beneficiary (including those who share meals, entertainment or transportation) must be provided.

B. *Biannual employer reports.*—Reports, due by those same dates from agent-employers, must give total expenditures incurred for lobbying by the employer himself, and itemize as well as name the beneficiary of any expense over $50. The total must include either the full salary or retainer of any agent, or that amount apportionable to the agent's lobbying duties.

C. *Biannual grassroots lobbying reports.*—Finally, reports are due on the same dates from organizations that do not employ a legislative agent, but nevertheless spend more than $250 during a calendar year "as part of an organized effort" to lobby. Those reports must name the organization's principals, state its purposes (and the legislation affecting those purposes), and give total lobbying expenditures broken down as above. The reports must also identify every contributor of more than $15 during the year for lobbying purposes, (dividing a contribution or expenditure for the purpose of avoiding its disclosure would constitute an explicit violation of the lobbying law.)

Limitations on gifts and other restrictions

Both legislative bodies adopted new codes governing conflicts of interest and personal financial disclosure late in 1977. No state senator or employee of the senate may: attempt to use improper means to influence a state agency; accept an economic interest "which represents a threat to independence of judgment"' use confidential official information to further someone's private financial interest; employ staff who perform other than official duties during working hours or who are more than reasonably compensated; intermingle campaign and personal funds; or appear for a fee before any executive branch unit of government (except in a "ministerial" capacity, or before a court or any other governmental unit where the proceeding is "quasi-judicial".

In addition, no member, officer or employee of the senate may accept gifts (other than campaign contributions and gifts from immediate family) aggregating more than $50 in a calendar year "from any person, organization, or enterprise having a direct interest in legislation, legislative action, or matters before an agency, authority, board, or commission of the Commonwealth . . ."

Generally similar restrictions apply in the new house code, with several exceptions. The house places a $100 ceiling on gifts from a single source. None of its members or employees may: serve simultaneously as a legislative agent; solicit compensation or campaign contributions for the performance of official legislative duties; or be placed on the state's payroll or represent any party with a direct legislative interest, within one year of leaving the house.

The lobbying law forbids compensation arrangements contingent upon a legislative outcome.

Personal financial disclosure

Both legislative bodies now require some form of disclosure of personal financial holdings and gifts. The house calls for disclosure of amounts but not of sources, while the senate demands both. The senate code does not mandate disclosure of gifts; the house does, of those above $35. Honoraria above $300 must be revealed under the house rules, but not under those of the senate.

Penalties

In addition to the secretary of the commonwealth's power to disqualify an offending legislative agent from such activities for three regular legislative sessions, the law provides for fines of between $100-$5,000.

(See: *Laws Regulating Lobbying and Legislative Agents,* Massachusetts General Laws, Chapter 3, Sections 39-50.)

MICHIGAN

Michigan's lobby law is not geared toward disclosure of lobbying expenditures (there is no periodic reporting requirement), but toward getting those who lobby to declare whom they represent. The last legislative attempt to strengthen its provisions—an omnibus political reform act passed 1975 which also embraced campaign practices, and personal financial disclosure for public officials—was invalidated by the Michigan Supreme Court soon thereafter because it unconstitutionally attempted to deal with more than one subject.

The act's supporters are now trying to gain legislative backing for some of its original components, among them a lobbying measure that would toughen Michigan's 30 year old lobbying statute by introducing a broader definition of "lobbying" and by mandating periodic—probably quarterly—reports of lobbying related expenditures. Passage of new lobbying legislation in some form could occur early in 1978.

Secretary of State

The secretary of state is responsible for keeping publicly available index of registered legislative agents and furnishing copies to all legislators, and for issuing registration certificates upon collection of a $5 fee. It is the duty of the attorney general to prosecute violations.

For registration and report forms, contact: Secretary of State, Gafner Building, Lansing, MI 48913. Phone: (517) 373-2533.

LOBBYING DISCLOSURE

Who must register and report

Under the law, a "legislative agent" is anyone who is employed, either privately or by an agency of the state or any other governmental unit, "to engage in promoting, advocating or opposing any matter pending" before the legislature, or who is "employed expressly for the purpose of "promoting, advocating, or opposing any matter which might legally come before" the legislature. (The terms "advocating," "promoting," and "opposing" are defined to cover only acts "performed directly with a member of the legislature" that relate to a pending legislative matter.)

Exempted from such coverage, however, are persons who either restrict their lobbying efforts to written communications or formal appearances with legislative committees (and properly identify themselves and client-interests), or who furnish information on a pending matter at the request of a legislator of committee.

Registration

Before lobbying commences, an agent must file a statement identifying himself and each of his employers, as well as the person who will act as custodian of all lobbying-related accounts and records. The certificate issued by the secretary's office upon registration and payment of the $5 registration fee, is considered prima facie evidence of compliance with the lobbying law. Additions and modifications to the registration statement must be made when such changes occur, and all statements must be renewed each December 31.

Reports

No periodic reports are required under the present law. However, under a provision said to be rarely enforced, whenever a legislative agent has any financial transaction with a legislator in his agent capacity, he must file within five days a sworn statement naming the member and describing the transaction. The secretary, in turn, must send the named official a copy of the statement.

Preservation of records

Every agent must keep, at a Michigan address listed in his registration, all records pertaining to his lobby-related expenditures and income. Such records must

be preserved for six years from the date of adjournment of the legislative session for which the agent was registered. And they must be produced "upon subpoena issued by a court of competent jurisdiction, or by a legislative committee created and authorized by a concurrent resolution of the legislature."

Limitations on gifts and other restrictions

Compensation arrangements conditioned upon the passage, amendment or defeat of legislation are forbidden.

Penalties

Failure to file a statement of a financial transaction with a legislator, or to comply with any other section of the law, is theoretically a felony punishable by a fine of between $200—$1,000, or imprisonment for from three months to one year. (See: Michigan Statutes 4.401 to 4.410.)

MINNESOTA

Provisions affecting campaign finance, conflicts of interest, the personal finances of public officials, and lobbying disclosure comprise Minnesota's 1974 Ethics in Government Act. Reformers hope that hearings in both the state house and senate will lead to the adoption of a requirement that lobbyists report their salaries separately from their lobbying expenditures—a poll by Minnesota Common Cause in late 1976 showed 87 percent of the 1977 legislature's members in favor of the change—but no changes have been made yet.

State Ethical Practices Board

The state's Ethical Practices Board was created to administer and enforce the provisions of the Ethics in Government Act. The bipartisan board is composed of six members, appointed by the governor, who must receive approval from three-fifths of the senate and house, voting separately. Two board members must be former legislators—one from the governor's political party, one not. Two members cannot have held elective or political office. The remaining two cannot support the same political party. In any case, no more than three members can be of the same party.

The board is empowered to: prescribe forms and regulations; issue advisory opinions based upon real or hypothetical situations; publish reports; and undertake audits and investigations. Any registered voter may file a written complaint. Board hearings or actions connected with a complaint or investigation must be confidential. Any person violating that confidentiality requirement including a board member or employee is guilty of a gross misdemeanor. Additionally, the board must make annual reports of its activities to the legislature, and report the names of any new registered lobbyists to the governor and the legislature, within 30 days of every lobbyist-report deadline.

For registration and report forms, contact: Minnesota Ethical Practices Board, Room 410, State Office Building, Saint Paul, MN 55155. Phone: (612) 296-5148.

LOBBYING DISCLOSURE

Who must register and report

The law compels registration by "lobbyists" who either: (a) are paid by another party, or authorized to spend money on another party's behalf, and either spend more than five hours (on direct communication or letter-writing) in any month, or $250 in a year (not including costs of travel and membership dues) to directly or indirectly influence legislative or administrative action, or (b) spend $250 in any year excluding travel and dues on such activities.

A long list of exemptions to the definition includes: state or local officials performing official functions; members of the news media working as such; paid expert witnesses who are either paid or otherwise requested to appear before a legislative body, or asked to appear before a state administrative agency by the agency or a party to the particular proceeding; persons appearing before or communicating with metropolitan agencies; stockholders in a family farm corporation who do not spend the threshold $250 on lobbying; and "parties and their representatives appearing or acting in any proceeding before a state board, commission or agency of the executive branch other than rule-making proceedings or cases of rate setting or power plant siting." (Although state and local officials are themselves exempt, an advisory opinion issued by the board has held that an individual retained by a state agency or political subdivision to represent that agency *does* have to register and report if he meets the threshold tests of "lobbying."

Registration

Within five days of meeting either of the threshold tests of "lobbying," a person must register with the board, identifying himself and each of his employers (includ-

ing every officer and director if the employer is a group of more than two people) and giving a general description of those subjects expected to be of lobbying interest. Registrations are valid until termination.

Reports

"Lobbyist disbursement forms," as they are called, must be filed five times during the year: by February 15 (covering October 1–January 31), March 15 (covering February), April 15 (covering March), June 15 (covering April 1–May 31), and October 15 (covering June 1–September 30).

The reports must update the information given in the lobbyists' registration, indicate whether total compensation plus expenses during the calendar year exceeded $500, name each contributor (to the lobbyist or his employer) of over $500 for lobbying purposes, and categorize aggregated expenditures (by materials distribution, media advertising, telegraph and telephone, postage, fees and allowances, entertainment, food and beverage, travel and lodging, gifts, and other disbursements). (An Advisory opinion issued by the Ethical Practices Board has held that, although the time and expense spent in writing and researching reports from which "lobbying materials" are extracted does not constitute "time spent lobbying," the cost of writing and otherwise preparing such materials must be reported as a lobbying expense.) In addition, the reports must identify any official who received any "gift, loan, honorarium, entertainment, food or beverage, and/or travel and lodging" valued at $20 or more during the reporting period, and state the purpose of the transaction.

Limitations on gifts and other restrictions

A public official in Minnesota is subject to three separate disclosure "programs" administered by the board: economic interest disclosure, representation disclosure, and conflict of interest procedures.

A. *Economic interest disclosure.*—Individuals accepting official state positions must file statements of personal financial holdings within 60 days after assuming office. Candidates for office must file such a statement within 14 days of announcing candidacy. Judicial candidates are exempted. If an individual is being considered for a state post requiring senate approval, he must provide a personal financial statement before his name is presented to the legislature. The commission is required to notify filers if they are delinquent.

Statements must disclose: the filer's occupation and principal place of business; the name of each business with which he is associated and the nature thereof; a list of real property within the state, excluding homestead property, in which he has a "fee simple interest," a contract for deed or an option to buy, whether direct or indirect, if valued in excess of $2,500. Only those businesses that the filer receives more than $50 in compensation as a director, officer, owner, member employee, etc., or in which the filer holds securities worth $2,500 or more at fair market value must be disclosed.

B. *Representation disclosure.*—An official who represents a private client for a fee before a state board, commission or agency must publicly disclose such representation by filing a representation disclosure statement within 14 days after participating in a hearing. The statement asks for the official's position, the agency before which he appeared and the appearance date, the subject of the hearing, and the identity of the client. Failure to file the required statement constitutes a felony.

C. *Conflict of interest procedures.*—Public officials must disclose a pending official action or decision which presents a potential conflict of interest situation, because it affects either the official's personal financial holdings, or those of a business with which he is associated. If time permits, notification must be made in writing directly to the board or to the official's immediate superior; otherwise, the official must orally inform his superior and file notice with the board within one week of the official action. The notice must describe both the decision involved and the potentially conflicting interest, identify those persons notified of the possible conflict, and explain, in cases presenting time pressures, why prior notice was not given.

The law specifies that where such a potential for conflict exists, the official's immediate supervisor must reassign the matter to another employee who does not have the conflict. Alternatively, if the official has no supervisor, he must either reassign the matter to another employee himself, or request the appointing authority to designate someone else to deal with the issue. Additionally, an official in such a potential conflict situation may not vote on the matter or offer a motion relating to it, unless required by law to do so—in which case he must send by certified mail, copies of his conflict notice to every party he knows to be affected by the matter. If the official is a legislator, he must appraise the presiding officer of his legislative body of the possible conflict; then, the house of which he is a member may, upon

request, excuse him from participating in the issue. Falsification or knowing omission of any of the information required above is a felony.

It is a gross misdemeanor for any person to hire a lobbyist and make compensation contingent upon the outcome of any legislative or administrative action.

Penalties

Late filing of reports required under the law constitutes a misdemeanor. Knowing falsification or omission of information required is a felony.

(See: Minnesota Ethics in Government Act, as amended 1976, Chapter 10A, Election Law of the State of Minnesota, Secs. 10A.03-10A.10; also, compilations of advisory opinions issued by the Minnesota State Ethical Practices Board and pamphlets on Lobbyists (No. 7), Economic Interest Disclosure (No. 3), Conflict of Interest Procedure (No. 4), and Representation Disclosure Procedure (No. 5).)

MISSISSIPPI

After almost two years of debate, the Mississippi legislature last March replaced a weak 1916 lobby-disclosure statute with a new law that re-defined broadly the kinds of "lobbying" subject to disclosure, instituted a comprehensive set of reporting obligations, and mandated stiff penalties for violation. A reported attempt by the state senate, to make the bill so tough that the house would reject it, backfired when the house approved the senate version. The ultimate result was a law that compels disclosure of attempts to influence action by the executive branch as well as the legislature, and obliges a lobbyist to identify legislators benefiting from the lobbyist's favors.

Secretary of State

Responsibility for the administration of the lobbying code rests with the secretary of state, who must develop a crossindexing system for recording lobbyist registration and reports, prescribe the appropriate disclosure forms, preserve the collected information for five years from the date of receipt and make it publicly available for copying at cost, summarize the reports of individual lobbyists into an annual compilation and relay to the state attorney general any failure to comply with the law that is not corrected within 30 days. The attorney general must prosecute any offense under the act.

For lobbyist registration and report forms, contact: Secretary of State, P. O. Box 136, Jackson, MS 39205. Phone: (601) 354-6541.

LOBBYING DISCLOSURE

Who must register and report

The law covers any person (including corporations and associations themselves, their individual officers and employees, and government employees) who, directly or indirectly, either employ others or are compensated themselves to influence action on legislation which is pending or which could legally come before the legislature or one of its committees, or administrative action by a unit of state or local government.

To be subject to disclosure, such lobbying must constitute "a regular function of . . . employment position or the position for which [one] is temporarily employed, hired or retained," regardless of extra compensation; persons exclusively representing their own interests, or their employer's business interests where lobbying is "not a primary function of employment position," do not have to register.

Other situations in which the act would not apply include appearances at the request of a legislative body or committee, professional drafting or advisory services not connected with lobbying, or bona fide news gathering or dissemination activities.

Registration

Persons covered by the law must, within 15 days of accepting lobbying related employment, give the secretary of state either one registration statement cosigned by the registrant and his employer, or two separate statements signed by each. Noncorporate registrants must include their place of business and nature of operations, expected duration of employment, and the subject matter of expected lobbying interest. Firms must add the residential address of each partner. Incorporated registering organizations must additionally indicate whether they are domestic or foreign, and list the names and home addresses of each corporation officer (or association member). Any changes in the information must be conveyed in a signed statement within five days. Registration must be accompanied by a $25 fee, and be renewed July 1 of each year.

Reports

An annual report, due by May 30 from lobbyist-employers, must show in detail all money or other things of value that they spent or became obligated for during the latest 12 months, either directly or indirectly, for lobbying. The report must include the name of each recipient and the amounts received.

The same reporting obligation applies to anyone who receives funds to be used for lobbying activities—presumably lobbyists. Reports by these persons must identify every contributor by his name, group affiliation and amount given, and describe the disposition of the funds. Legislators who received benefits of value above $25 on a single occasion must be listed in the report, and notified in writing by the reporting individual of their inclusion.

Penalties

Intentional violations of the act, committed by either covered individuals or advisors to covered officials, carry a fine up to $1,000 and/or up to six months' imprisonment in the county jail for a first offense, and up to $5,000 and/or 3 years' incarceration in the state penitentiary for subsequent violations. A corporation or association convicted of violations may be fined up to $5,000 for each offense. Both the corporation or association and its individual officers and employees may be prosecuted.

(See: House Bill No. 430, signed into law March 23, 1977; amends sections 5-7-1, 5-7-5, 5-7-11, 5-7-13 and 5-7-15 of the Mississippi Code of 1972.)

MISSOURI

Missouri's lobbying disclosure statute is distinguished by its provision for a Special Assistant Prosecutor to investigate and prepare to prosecute violations by lobbyists or their employers.

Chief Clerk of the House; Secretary of the Senate

Registrations and reports are to be filed with both the chief clerk of the house and the secretary of the senate. The two offices, however, have no rulemaking or other interpretive authority. They must preserve the statements and keep them open to the public for inspection or copying "for a reasonable fee," for two years from their filing date. The prosecuting attorney for Cole County (which contains Jefferson City) employs, out of state funds, a special assistant prosecutor who handles all investigations and prosecutions under the state's lobbying law. For registration and report forms, contact: Chief Clerk of the House and Secretary of the Senate, State Capitol, Jefferson City, MO 65101. Phone: (314) 751—3659 (house); 751-3766 (senate).

LOBBYING DISCLOSURE

Who must register and report

The law distinguishes between "lobbyists" and "witnesses" in determining what information must be disclosed.

"Lobbyists"—who must register within five days of beginning their lobbying—are defined as those who act either in the course of employment, or at any other time for compensation, to influence legislative action, i.e. "any bill, resolution, amendment, nomination, appointment, report, and any other matter" that could be acted upon by the General Assembly. The definition expressly includes any persons (other than elected state officials) employed to represent a unit of Federal, state or local government.

No exemptions from the registration requirement are given. However, a separate category of "witnesses"—who engage in lobbying activities "on an occasional basis only and not as a part of regular conduct," and spend no more than $100, exclusive of their own travel and other personal expenses, on lobbying during a legislative session—need only identify themselves and their clients upon making an appearance before a legislative committee.

Registration

The registration forms, to be filed in duplicate with the chief clerk and the secretary, must fully identify the lobbyist and anyone he employs, or those by whom he is employed, to lobby. Updating statements must be submitted within one week of any changes in the lobbyist's employment or representational status.

Reports

Reports detailing the lobbyist's activities must be made: (1) within ten days of the convening of any regular or special legislative session; (2) 45 days before the adjournment of any regular session, and (3) within 30 days after the close of a session in any year in which a lobbyist has engaged in lobbying-related activities.

These reports must give: (a) total lobbying expenditures, and an itemization categorized by printing and publication expenses, media and other advertising costs, travel and entertainment; (b) a listing, by recipient and amount, of each honorarium, gift, loan, or service of value exceeding $25 or more in the aggregate during any calendar month, and (c) the subjects of possible legislative action in which a principal of the registrant has an interest, giving the principal and the position taken.

Limitations on gifts and other restrictions

The law prohibits legislators, and any member of their campaign committees, from using the statements filed by lobbyists for the purpose of soliciting campaign contributions, or of selling tickets to a testimonial dinner "or any function requiring the donation or expenditure of money, goods or services."

Penalties

Violation of any section of the lobbying law is a misdemeanor punishable by a fine of up to $1,000 and/or imprisonment for up to a year. In addition, convicted violators may not register to lobby before the general assembly for two years from the date of violation.

(See: Section 150.470, Revised Statutes of Missouri, as amended in 1975.)

MONTANA

Efforts to expand the 1959 Montana lobbying law and require periodic reporting from lobbyists have not made it out of committee. The current statute stresses, as its purpose, the "licensing" of lobbyists and "the suspension of revocation" of such licenses. Such suspensions—but no permanent revocation—have occurred.

Secretary of State

The secretary of state is charged with issuing licenses to duly registered lobbyists. In addition the secretary must keep a public docket listing those registered and their principals, and report to the legislature every Tuesday, beginning the first week following the commencement of a legislative session, the name of those lobbyists and principals and the legislative subjects of lobbying interest. For registration forms, contact: Secretary of State, State Capitol, Helena, MT 59601. Phone: (406) 449-2034.

LOBBYING DISCLOSURE

Who must register and report

The law requires the registration and licensing of "lobbyists," defined as those who attempt, for hire, to influence legislation before the legislature. The definition covers those who lobby as part of their regular employment duties.

Exempted from coverage, however, are those who are reimbursed only personal travel and living expenses (not considered as "lobbying for hire"), and public officials acting in their official capacities (although any state or local governmental entity which engages a lobbyist to influence legislation that potentially affects its statutory powers, duties, or appropriations, is considered a "principal"). An exemption also extends to persons who do no more than appear before legislative committee so long as they register such appearances in writing.

Registration

Within one week of employing a lobbyist, the employer must cause his lobbyist's name to be entered in the docket kept by the secretary of state. The lobbyist must also see to it that he is registered, and further supply the secretary with a written authorization, signed by the principal, within 10 days. Registration statements must identify the lobbyist and all principals, and either specify the subjects to which lobbying employment relates, or indicate that the lobbying employment covers all potential legislative issues in which the principal has an interest. The registrant must keep the information in his statement up-to-date, and should notify the secretary's office of a termination of lobbying activities.

NOTE.—As the law is written, registration of a lobbyist is not an automatic process, but subject to the approval of the secretary of state and the subsequent granting of a license to lobby. Licenses are available to "any person of adult age and good moral character who is a citizen of the United States," upon approval and payment of a $10 license fee. No application may be denied without first affording the applicant a hearing; a decision must then follow within 10 days. All such licenses must be renewed by January 1 of even-numbered years.

Reports

There is no periodic reporting requirement in the Montana law. However, any written information distributed to the full membership of either legislative body must be also deposited, in triplicate, with the secretary of state within five days.

Limitations on gifts and other restrictions

No unlicensed lobbyist may engage in lobbying. The lobbying code also states that compensation arrangements that are contingent upon the outcome of a legislative matter are prohibited.

Penalties

Violating the lobbying law is a misdemeanor, resulting in a fine of up to $200 or up to six months' imprisonment, or both. Any person whose license is suspended, or is found to have violated the act, may not resume lobbying until he is reinstated.

(See: Montana Lobbyist Registration and Licensing Law, Chapter 157, Laws 1959, Sections 43-801 through 43-808, R.C.M. 1947.)

NEBRASKA

In 1976, the Nebraska legislature passed the Political Accountability and Disclosure Act, with provisions covering lobbying, conflicts of interest, and campaign practices, and created the Nebraska Accountability and Disclosure Commission to enforce it.

Nebraska Accountability and Disclosure Commission; clerk of the legislature

The composition of the commission created to enforce the act is far different than that of any other state agency responsible for lobbying regulation. The governor and the secretary of state are full voting members of the eight-member commission. Moreover, they each appoint three others to fill the remaining six commission positions. Two of the governor's appointees must come from names submitted by the state legislature; two of the secretary of state's appointees must come from names submitted by the Democratic and Republican state chairmen. The governor is given broad authority to remove any commission member for "inefficiency, misconduct," etc. Should a minor party garner five or more percent of the general election vote, a ninth commissioner—a member of that party chosen by the governor from a list submitted by the party chairman—will be added. Members are limited to one full six-year term.

Given statutory authority to serve as the primary civil and criminal enforcement agency for the act, the commission is empowered to: promulgate regulations; issue advisory opinions; and review all statements and reports filed with the commission to determine whether required reports have been filed or whether they are "deficient," and make random audits and field investigations. The commission may investigate possible violations upon the complaint of any person or on its own initiative. All proceedings and recommendations made with respect to investigations are confidential unless the alleged violator waives that right. Members or employees who violate the confidentiality right are subject to fines of up to $1,000 or to 90 days in prison.

Lobbyist registrations and reports are filed with the clerk of the (unicameral) legislature, using forms prescribed by the clerk and approved by the executive board of the legislative council. Other duties of the clerk include compiling updated lists of registrations for weekly publication in the legislative journal while the unicameral is in session; and preparing monthly in-session and periodic out-of-session summaries of disclosure statements for each legislator and requesting member of the press. The clerk must also refer all statements to the commission—monthly while the legislature meets, and at least once during the remainder of the year—and the commission, or the legislature if it wishes, may require lobbyists and employers to furnish additional information.

For registration and report forms, contact: Clerk of the Legislature, State Capitol, Lincoln, NE 68509. Phone: (402) 471-2271.

LOBBYING DISCLOSURE

Who must register and report

"Lobbyists" required to register under the new law are those persons who are authorized to promote or oppose the "introduction or enactment of legislation or resolutions" on behalf of another person or group.

The definition is not intended to embrace, either as a "lobbyist" or "principal," persons whose activities are confined to: clerical duties; appearances before a legislative committee that are either made at a legislator's request, or accompanied by written identification of the employer being represented; or "writing letters, placing

telephone calls, or furnishing written material" (or copies of materials which are kept by the clerk in a public file). News media personnel who do no more than disseminate news and editorial comment to the general public, "in the ordinary course of business," are also exempt.

Registration

Persons "employed, retained or authorized" to lobby must register with the clerk in advance of doing any lobbying and pay a $5 fee. Registrations expire every December 31. The registration statement must fully identify the lobbyist and all principals, disclose the amount of compensation paid the registrant to lobby since the beginning of the year in which the statement is filed, and list the matters on which the lobbyist expects to, or has, lobbied. The statement must also name any state officials, or members of their staff or immediate family, who the registrant he employs, or who is employed by someone else acting on the registrant's behalf.

Reports

Reports must be filed with the clerk's office: (1) for each month the legislature was in session; (2) one during each interim period between regular legislative sessions, and (3) within 30 days after the end of each session.

The latter report, to come from each registrant, need merely list the legislation upon which the lobbyist acted, "including identification by number of any bill or resolution and the position taken."

The monthly in-session and interim reports, on the other hand, must be prepared by the registrant, one for each principal, and by the principals themselves as well. They are due within ten days of the end of the period covered. The statements must categorize all amounts "received or expended directly or indirectly for the purpose of carrying on lobbying activities," by miscellaneous expenses, entertainment, (including food and drink), lodging, travel, and lobbyist compensation, and include a detailed statement of "any money loaned, promised or paid" by the lobbyist to a legislator or to anyone on his behalf. A special provision of the reporting requirement applies to lobbyists who are part of a business formed primarily for lobbying purposes: They must submit with their reports a list of all individuals contributing money to defray lobbying-related costs. In the event that the lobbyist's employer is not such a business, only the officer and directors of the entity would have to be given.

Preservation of records

Each lobbyist is obliged to preserve all "accounts, bills, receipts, books, papers, and documents" needed to substantiate a report, for three years from the date of the report's filing, and to make those records available at the commission's request.

Limitations on gifts and other restrictions

Nebraska's lobbying code bans lobbyists or anyone acting on their behalf from giving "gifts" (including honoraria) worth above $10 in a month, to a public official or his immediate family. Officials, their staff and family are also not allowed to knowingly solicit or accept such gifts; a violation by any of the parties is a misdemeanor punishable by fines of up to $1,000 and/or up to 90 days in jail. (Duly reported campaign contributions, commercially reasonable loans or transactions of equal value, are not regarded as gifts.)

Other activities prohibited in the lobbying statute include the knowing and willful making of false statements, compensation arrangements contingent upon the outcome of legislative or administrative action, the instigation of legislation for the purpose of gaining employment to oppose it, the promise of financial support in exchange for official action, and any other behavior which would "reflect discredit on the practice of lobbying or on the legislature."

The conflict-of-interest provisions of the Accountability and Disclosure Act provide that officials sensing a conflict between private financial interests and official duties must so advise his immediate superior or the commission in writing, and follow their directives.

Personal financial disclosure

State and county office-holders must file annual statements disclosing their personal finances by April 1. Similar statements must be filed by candidates at the same time they file for office.

The statements must disclose the following: the name and address of businesses with which the filer is associated as well as a description of that association (includes any entity served by the filer as a trustee); the source of any income or gift valued at $100 or more together with a description of services rendered; a description of and the location of all real property held in the state whose fair market value exceeds $1,000 (while the filer's residence is excluded from the provision,

other forms of wealth are not, e.g., checking accounts, stocks and bonds, government securities, etc.); names and addresses of creditors to whom the filer or a member of his immediate family owes $1,000 or more (exemptions include bank loans, or loans made by relatives); and the name, address and occupation of those from whom a gift was received in excess of $100 together with a description of "the circumstances of each gift."

Penalties

Violation of the lobbying or conflict-of-interest portions of the act is a misdemeanor which carries fines up to $1,000 and/or 90 days imprisonment.

(See: Nebraska Political Accountability and Disclosure Act, Legislative Bill 987, approved by the governor April 13, 1976.)

NEVADA

Hours before it adjourned, the 1977 Nevada legislature passed amendments to its lobbying law, allowing lobbyists to skip reporting periods in which monthly expenditures fall below $50, exempting public officials lobbying in their official capacity from coverage (but banning their receipt of compensation from non-public sources), and requiring those lobbying to wear identification badges.

Secretary of State

The secretary of state's administrative responsibilities under the lobbying law include: adopting regulations, preparing forms, and developing "uniform methods of accounting;" creating a system of cross-indexing of reports; preserving all filed statements for five years, and keeping them open for public inspection and copying; and sending to each state county clerk an alphabetical list of all registrants, their principals, and their "principal areas of interest." The secretary also must inspect every disclosure statement he receives within 10 days, inform any filer of irregularities or written complaints against him, and notify any person who he believes has failed to file as required.

For registration and report forms, contact: Secretary of State, State Capitol, Carson City, NE 89710. Phone: (702) 885-5203.

LOBBYING DISCLOSURE

Who must register and report

The law pertains to those persons who appear "in person in the legislative building," and communicate "directly" with a legislator, on behalf of someone else, to influence legislative action. Whether compensation is received is not material.

The law, however, specifies six exemptions: (1) lobbying activities confined to formal committee appearances which are clearly identified; (2) bona fide news media personnel who contact legislators solely in their news-gathering function; (3) state agency heads or employees who appear before legislative committees only to explain the effect of proposed legislation; (4) elected state or local officials who confine their lobbying to issues "directly related to the scope" of their office; (5) legislators and employees of the legislative branch, and (6) persons who lobby only their own representatives.

Registration

Registration with the secretary of state must take place within two days of beginning lobbying, and be renewed with any new legislative session. The statement must fully identify the registrant and his principal (including the latter's officers and directors, if it is not a natural person); list any "direct business associations" or partnerships with any current legislator; give the principal areas of interest on which the registrant expects to lobby; (if the employing association is a membership group) state the number of members; and provide a sworn declaration that none of the registrant's compensation or reimbursement is in any way contingent upon legislative action.

Reports

A. *Monthly in-session reports.*—Between the first and tenth day of the month following a month during which the legislature met, and during which a registrant incurs $50 or more in lobbying-related expenditures, a report must be filed. These reports must give the total amount of expenses made in direct, legislative lobbying-related communications, and also categorize them by: entertainment, gifts and loans, and other expenditures (not including personal food, lodging, travel nor membership dues).

B. *Final reports.*—Within 30 days of the end of a legislative session a final report must be handed in—subject to the same under-$50 exemption as the monthlies—giving a cumulative accounting of the information required in the in-session reports.

Limitations on gifts and other restrictions

The law bans lobbyists from giving to legislators, their staffs or immediate families (or any of the latter from receiving), any gifts that exceed $100 in aggregate value in any calendar year.

Other prohibited activities include the knowing or willful falsification or misrepresentation of facts (either in the course of lobbying, or in connection with a disclosure statement); compensation arrangements contingent upon legislative outcomes; and the act of securing the introduction of legislation in order to gain employment to oppose it. A member of the legislative or executive branch or any local public official may not lobby for compensation or reimbursement for any principal other than for his official employer, or for an organization composed of elected or appointed public officers.

Penalties

The registrant's final report, says the law, is signed "under penalty of perjury." Late filing fines (of $5/day for the first 30 days, and $100/day thereafter) may be assessed.

(See: Nevada Revised Statutes Chapter 218, as amended by Senate Bill 445 (1977).)

NEW HAMPSHIRE

A comprehensive revision of New Hampshire's 1909 lobbying code passed the house but died in the senate in May, leaving no chance for amendments to the statute until January 1979, at the earliest.

Secretary of State

The secretary of state is charged with prescribing the lobbyist registration and reporting forms, keeping the information supplied open for public scrutiny, and collecting a $25 registration fee. The attorney general prosecutes violation of the statute. For registration and report forms, contact: Secretary of State, State House, Concord, NH 03301. Phone: (603) 271-1110.

LOBBYING DISCLOSURE

Who must register and report

Persons are held subject to the lobbying law if they are employed for compensation to influence, either directly or indirectly, legislation either pending or proposed before the legislature. [This definition has been held to require that those who lobby only while the legislature is not in session still must register.)

The law contains no exemptions.

Registration

Any such person, deemed a "legislative counsel" or "legislative agent," must register with the secretary of state and pay a $25 registration fee, prior to actually lobbying. The information provided must identify the registrant and his employer and give the "usual occupation" of both; give the duration of employment, if determinable, and the legislative issues subject to lobbying. The statement must be kept up to date, but is otherwise valid until terminated.

Reports

A statement is due from each registrant within 30 days of the discontinuation of a legislative session. It must include an itemization, by date, description, and beneficiary, of all lobbying-related expenditures categorized by: hotel, meals, travels, entertainment, and other expenses. Fees received by the registrant must also be disclosed.

Penalties

Violations of the act constitute a felony if committed by an organization, and a misdemeanor if committed by a natural person. Knowing falsification of any required information is considered perjury.

(See: New Hampshire Revised Statutes Annotated, Chapter 15, Sections 1-7, as amended 1973.)

NEW JERSEY

In the wake of an appeals court decision, lobbyists in New Jersey may be required to disclose their activities under two separate statutes and to two separate governmental bodies. In 1971, legislators approved the Legislative Activities Disclosure Act (detailed below), requiring registration and reporting to the state attorney general from legislative agents who spend enough time or money on lobbying to "trigger" one of various thresholds for coverage. That measure required periodic disclosure of lobbyists' activities, but not of their expenditures, income or sources of funding. An

attempt to fill that gap was made in 1973 with passage of the Campaign Contributions and Expenditures Reporting Act. It created an Election Law Enforcement Commission as administrator, and handed lobbyists a second set of reporting obligations—but this time without any coverage thresholds to separate the infrequent lobbyist from the professional. The commission took it upon itself to establish thresholds by regulation—an action labeled by the legislation's opponents as an impermissible attempt to narrow an unconstitutionally "overbroad" statute. On those grounds, the lobbying sections of the 1973 act were quickly challenged by the state chamber of Commerce, and lower court enjoined their implementation *(New Jersey Chamber of Commerce et al.* v. *New Jersey Election Law Enforcement Commission,* decided August 22, 1975). The legislature reacted by passing amendments to the law in 1977 that set $750 per year as the minimum amount a so-called "political information organization" would have to spend "for the purpose of influencing the content, introduction, passage or defeat of legislation" through press releases, letters and other "grass roots" media before coming under the act's coverage. The amendments (A 3140) were adopted in June, but are yet to be signed into law by Governor Brendan T. Byrne, despite heavy pressure from Common Cause and other government reformers.

Meanwhile, however, the commission appealed the case. And in mid-December of 1977, the New Jersey Court of Appeals overturned the lower court by finding that the statute in its original form was in fact constitutional.

Byrne's signature on the 1977 amendments could make any further appeal of the case (perhaps to the state supreme court) a moot issue. Conversely, if the appeals court ruling is not appealed or is upheld by a higher court, any approval by Byrne could be academic. Whatever happens, New Jersey appears, for the moment, to be the only state with two distinct lobbying codes enforced by two separate bodies within the executive branch.

Attorney General

The 1971 Legislative Activities Disclosure Act is administered and enforced by the state attorney general, who prepares guidelines for disclosure, prescribes the appropriate forms, collects and preserves the required information (open for public inspection) for five years, and issues name tags to be worn by registrants while lobbying. The attorney general may ask the state Superior Court to grant an inspection order if he believes that failure to file, or false filing, has occurred. He may then subpoena documents and witnesses, require statements under oath, and "impound any record, book or other documents which may be specified by order of the court."

For registration and report forms, and a copy of its interpretive guidelines, contact: Department of Law and Public Safety, Office of The Attorney General, State House Annex, Room 103, Trenton, NJ 08625. Phone: (609) 292-9650.

LOBBYING DISCLOSURE

Who must register and report

The 1971 lobbyist code requires registration by "legislative agents," defined as those who either: (1) agree to receive anything of value to "influence legislation by communicating personally or through an intermediary"; (2) agree to be reimbursed, directly or indirectly, for lobbying expenses over $100 in any three month period; (3) "hold themselves out as engaging in the business of lobbying, or (4) engage in such activities incident to regular employment, and to an extent that is neither "isolated" (limited to one legislative appearance, or activity on one piece of legislation during any two-year legislative term), "exceptional" (not contemplated by the employment, and limited to two pieces of legislation during a two-year term), or "infrequent" (constituting less than 20 hours or one percent—whichever is smaller—of employment time in a calendar year.

Excepted from coverage are, of course, "isolated, exceptional and infrequent" lobbying activities, as well as: (1) communications directed at the general public as well as the legislature; (2) news and editorials disseminated by the general media; (3) official acts of state or local public officials; (4) legislative action by a duly organized political party or committee; (5) testimony delivered by an individual who is uncompensated (other than for necessary and actual expenses) and performs no other lobbying; (6) lobbying by bona-fide religious groups in order to protect freedom of religious practice, and (7) legislative communications that are "undertaken as a personal expression and not incident to employment," (even if the legislative subject is of interest to one's employer), so long as no additional compensation is received thereby.

Registration

Prior to any lobbying (or within 30 days of any lobbying-related employment), a legislative agent must file a "notice of representation" with the attorney general for

each employer represented. Any material change in registration, including the receipt of compensation from a new employer, must be indicated in a supplemental statement within 15 days. The original statement must fully identify registrant and the source of his compensation, and any other person on whose behalf the lobbying is undertaken; indicate whether other, nonlobbying services are also performed; give the duration of the lobbying arrangement, if ascertainable, and the type of legislation to be promoted or opposed. Notices of termination should be filed within 30 days of an end to lobbying activities, and the lobbyist's identification card returned.

Reports

Quarterly reports (accompanied by a $5 fee) are required from registrants, to be filed between the first and 10th days of a subsequent quarter. The reports must update the information provided in the notice of representation, describe particular legislative items upon which lobbying took place, and name each legislator or employee contacted and the subject of the contract.

Preservation of records

A registrant must preserve "all records of his receipts, disbursements and other financial transactions in the course of his activities as a legislative agent," for three years succeeding the calendar year in which such expenses were made, but only pertaining to those quarterly periods within which the total of his compensation and expense-reimbursement was over $500.

Limitations on gifts and other restrictions

In May, Governor Byrne signed into law a package of three amendments to the lobbying code that: (1) require all lobbyists to obtain their present clients' written consent prior to taking on new and possibly adverse interests (A 997, now Chapter 90 of 1977 laws); (2) make it a misdemeanor for a lobbyist to seek the introduction of a bill in order to oppose it later (A 998, now Chapter 91), and (3) hold the clients of a lobbyist guilty of a misdemeanor if he fails to file a proper notice of representation (A 999, now Chapter 92). Additionally, all staff of the legislature are forbidden either to act as legislative agents, or to receive direct or indirect compensation for influencing or purporting to influence legislative action, and are guilty of a misdemeanor if they do.

Penalties

Any person who knowingly and wilfully falsifies any disclosure statement, or who makes legislative communications that are false or misrepresented, is guilty of a felony.

(See: Legislative Activities Disclosure Act, Chapter 183, P.L. 1971; and New Jersey Campaign Contributions and Expenditures Reporting Act, Chapter 83, P.L. 1973.)

NEW MEXICO

The New Mexico legislature last April thoroughly rewrote and toughened its law on lobbying, now called the "Lobbyist Regulation Act." Among other things, it requires much more detailed reporting by lobbyists, and gives the state attorney an expanded mandate to investigate suspected violations. The new code took effect July 1.

Secretary of State; Attorney General

The administrative duties of the secretary of state, under the lobbying law, include prescribing appropriate forms, adopting complaint-processing and violation-notification procedures, and preserving all disclosure statements for a period of two years.

The state attorney general may commence an investigation upon the sworn complaint of an offence by any person. If he comes to believe that the violation has in fact occurred, he must notify the suspect and hold an informal hearing before taking further action. Then, he may bring civil action to enforce compliance.

For registration and report forms, contact: Secretary of State, Executive Building, Santa Fe, NM 87503. Phone: (505) 827-2697.

LOBBYING DISCLOSURE

Who must register and report

Registration and reporting is the obligation of any person who "is compensated for lobbying or who in the course of his employment lobbies," i.e., attempts to influence the disposition of any matter "to be considered or being considered" by the legislature or any of its committees.

Four exclusions from coverage are provided, for: (1) elected state or local officials acting in their official capacity; (2) a legislator or member of his staff; (3) any

legislative witness who is called to testify, and compensated either wholly or partially by public funds, and (4) anyone who "merely appears for himself" before a legislative committee.

Registration

Such "lobbyists" must register with the secretary either during January prior to each regular legislative session, immediately preceding any special session, or before beginning lobbying activities. The statement must fully identify registrant and each principal, giving: "a full disclosure of the sources of funds used for lobbying"; a brief description of the matters for lobbying; and the identity of the custodian(s) of the lobbyist's records. Supplementary statements, or notices of termination, must be submitted within 30 days of such changes.

Reports

Expenditure reports must be filed: (1) at the time of registration (covering all expenses incurred up to the filing date and not previously reported), and (2) prior to the 60th day after the end of any regular or special legislative session (covering all interim expenses). The totals of all expenditures for entertainment (including food and beverage), advertising, and contributions (defined to include political contributions, ticket-purchases, and any other than equal-value transactions), must be given. A lobbyist's personal living expenses, and those "incidental to establishing or maintaining an office," are excluded. Each item over $50, made for the benefit of any legislative or other state official or employee, must be listed by date, amount and beneficiary.

Preservation of records

A lobbyist (or his employer) must preserve all records needed to substantiate disclosure statements, for two years from the relevant statements' filing.

Limitations on gifts and other restrictions

In 1976, Governor Jerry Apodaca issued an executive order (No. 76–41) requiring all appointed executive branch officials to log each oral and written contact with a lobbyist, (defined in the order as those spending over $250 on lobbying quarterly), and disclose all gifts and gratuities from any lobbyist that total over $50.

A separate conflict-of-interest statute specifies that legislators and other public officials may not receive gifts that would either tend to influence their official acts, or come from any person with whom the official has been involved in any official act within the past two years (excepting items that are of insignificant monetary value, are public awards or commercially reasonable loans made by an authorized lending institution, or political contributions). Nor may an official acquire a financial interest in any entity that would tend to be affected by his official actions, and he must disqualify himself from participation in any matter directly affecting a business in which he has a financial interest. State agencies may not enter into private contracts over $1,000 with any business in which an official has a controlling interest, and may not take any action favorably affecting an entity which is represented by a former state employee within one year of his last day of government employment, if the ex-official has a $1,000-plus interest in the concern.

The state's lobbying law itself bans compensation arrangements that are wholly or partially conditioned upon the outcome of lobbying activities.

Penalties

Knowing violation of the lobbying code is a misdemeanor, and carries a maximum $1,000 fine.

(See: New Mexico Statutes Annotated, 2-13-1 through 2-13-9, Laws of 1977, on lobbying; Sections 5-12-1 through 5-12-15, Laws of 1967, on conflicts of interest.)

NEW YORK

Persistent calls from New York's secretary of state and government reformers, for an overhaul of the state's 1906 lobbying statute, resulted in passage of the 1977 Lobby Registration and Disclosure Act. In its final form, the legislation was a model of compromise—judged acceptable by the legislative leadership, the state's Common Cause and other proponents of strong disclosure requirements, as well as the New York state affiliate of the American Civil Liberties Union, and others concerned about the constitutional implications of overbroad disclosure. Secretary of State Mario M. Cuomo, while expressing disappointment with some "weaknesses" in the bill, recommended to Governor Hugh L. Carey, that he sign the legislation, and Carey did so last August.

Secretary of State: Temporary State Commission on Regulation of Lobbying

When the law became fully effective at the start of 1978, the administration and enforcement functions, which have been split between the secretary of state and the state attorney general, were united under a new Temporary State Commission on Regulation of Lobbying.

The commission's six members are to be appointed by the governor, with the majority and minority leaders of the state assembly and senate each nominating one member. The remaining two commissioners must come from the political party of the senate president and minority leader, respectively. The first six commissioners will be serving staggered one-to-three year terms; future appointees will serve three years each, but remain in office until their replacements are appointed. The new law provides that no commission member may either simultaneously hold any other state or local public office for which he is compensated, or be subject to the commission's jurisdiction. A "sunset" provision in the act, which would cause its automatic repeal unless the legislature re-approves it at periodic intervals, is responsible for the "temporary" in the commission's title. A chairman and vice-chairman, from different "major political parties," are to be elected by a majority of the commissioners to serve one-year terms; successor-chairmen must also be from different parties. Commission decisions will be made upon an affirmative vote of a majority. The law also provides for an executive director, appointed jointly by the commission chairman and vice-chairman. The commission is statutorily bound to meet at least once every (quarterly) reporting period, and as often as it finds necessary. The law gives the commission an initial $150,000 budget to carry out its work, which includes: conducting any necessary investigations (with the power to subpoena both witnesses and records); holding private and public hearings; prescribing necessary disclosure forms; issuing advisory opinions; compiling a monthly docket of lobbyist registrations; and providing an annual report to the governor and the legislature "summarizing the commission's work and making recommendations with respect to this act." In addition the commission must preserve, and keep open to public inspection, all registrations and reports for a period of three years from their filing.

For registration and report forms, contact: New York State Temporary Commission on Regulation of Lobbying, Alfred E. Smith Building, First Floor, Albany, NY 12225.

LOBBYING DISCLOSURE

Who must register and report

The new law offers a much-expanded definition of "lobbyist" to include any person, firm, corporation or association "retained, employed or designated" by another party (including a public corporation) to influence either legislative action, or "the adoption or rejection of any rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency."

The law provides four exemptions from the disclosure requirements, for: (1) persons engaged solely in drafting and advising as to the effect of legislation or administrative rules and rates; (2) state officials and their representatives, acting in an official capacity; (3) media personnel engaged in news-gathering or dissemination, and (4) persons who restrict their lobbying to appearances at public legislative or administrative meetings.

Registration

An annual registration is required of lobbyists whose lobbying-related compensation and expenditures exceed $1,000 combined in a year. The statement is due by January 1 from those who have entered into an agreement on or before December 15 to lobby on another's behalf, and who "reasonably anticipate" exceeding the $1,000 threshold. In cases of aggrements entered into after December 15, registration is due 15 days thereafter. Where the $1,000 threshold is unexpectedly passed, registration must be filed not later than 10 days thereafter.

The registration statements must fully identify the lobbyist and principal, and contain a copy of any written retainer agreement (or summary of the substance of any oral agreement), a description of the general subjects on which the registrant expects to lobby; and a list of those agencies (or committees of the legislature) which are expected to be lobbied. If the information changes, written amendments to the registration statement must be made within ten days. Termination notices are required within 30 days after a lobbyist ceases his activities.

Reports

A. *Quarterly lobbyist reports.*—A registered lobbyist is required to file a disclosure report: (1) by the 15th day after the end of a reporting period during which the

lobbyist attained the $1,000 threshold, and (2) by the 15th day after the close of any reporting period during which lobbying-related compensation and expenditures combined totalled $250 or more. The quarterly reporting periods cover Jan. 1–March 31; April 1–June 30; July 1–Sept. 30, and Oct. 1–Dec. 31.

All reports must give the aggregate expenditures for the reporting period and a cumulative total for the year, and update all the information supplied at registration. The report must also contain either the lobbyist's salary-in-full or that portion attributable to lobbying, and give the aggregate amount spent on salaries for persons other than the lobbyist. Lobbying-related expenditures (other than for personal sustenance, lodging or travel, or for printing and mailing costs under $500) are to be listed in the aggregate if under $50; otherwise they must be described as to amount, recipient and purpose.

A similar reporting requirement applies to those who register on behalf of a public corporation.

B. *Annual Reports by Lobbyists and Employers.*—Lobbyists required to report periodically, public corporations subject to the reporting requirement, and the employers of reporting lobbyists must separately file annual reports, due by February 1 to cover the preceding year. Those filed by the lobbyists and public corporations must give on a cumulative basis all the information called for in the periodic reports. Employers, on the other hand, will have to refurnish the information contained in the periodic statements of their retained agents.

Preservation records

The new law requires that any expenditure of $50 or more, for lobbying purposes, be "paid for by check or substantiated by receipts," and obligates the spender to keep substantiating records on file for three years.

Limitations on gifts and other restrictions

Arrangements between an agent and his employer, wherein compensation is contingent in whole or in part upon the outcome of a legislative or administrative matter, are not allowed.

"Sunset" provision

The new law contains a so-called "sunset" clause providing for the automatic repeal of the statute on December 31, 1981, and an end to the authority of the commission three months thereafter, unless the legislature expressly reviews, and re-enacts, the lobbying law.

Penalties

Knowing and willful violation of any part of the lobbying law constitutes a Class A misdemeanor, unless another person has been duly designated to comply with the statute, an organization's chief administrative officer will be held responsible for any knowing and willful violation by that organization.

The commission may institute a civil action in the event of a delinquent filing, if the offending person or group has been notified via registered mail, and still fails to comply within a specified amount of time. The fine to imposed—not to exceed $1,000 in any case—is to be determined at a commission hearing, where the offending party has the right to appear on its own behalf. Failure to file after notification by the commission would also constitute a Class A misdemeanor.

(See: Senate Bill 6357-A (also known as Assembly Bill 8703-A), passed May 25, 1977, amending New York Legislative Law, Article 4, Section 66.)

NORTH CAROLINA

North Carolina's lobbying code was completely re-written in 1975, and the new statute took effect last January.

Secretary of State

With responsibility for administering the act, the secretary of state collects registrations, employer authorizations and reports on forms that he prescribes, notifies delinquent filers, and reports apparent violations to the state attorney general. The latter official must then make "appropriate investigation" and forward his conclusions to the Wake County district attorney, who shall prosecute any violator.

For registration and report forms, contact: Secretary of State, 116 West Jones Street, Raleigh, NC 27603. Phone: (919) 733-3433.

LOBBYING DISCLOSURE

Who must register and report

The law defines "legislative agent" as any person "who is employed or retained, with compensation, by another person, to give facts or arguments to any member of

the General Assembly during any regular or special session," concerning any pending or upcoming legislative action.

The secretary of state has said that "compensation" is to be "broadly defined," to embrace those whose lobbying activities are incidental to regular employment, but not to cover persons receiving only personal travel and subsistence reimbursement. Other specific exemptions are provided, for persons: (1) expressing "a personal opinion"; (2) restricting themselves to invited committee appearances; (3) performing only counseling services, such as legislative drafting and advising on the effect of proposed legislation, or (4) engaging in the gathering or distribution of news or editorial comment for a news medium. Legislators are specifically excluded, as are state employees who lobby on matters solely pertaining to their office and duties (although the governor and all state department heads must "file and maintain current lists of designated legislative liaison personnel with the secretary of state and report on money expended in influencing legislation.")

Registration

The law requires that a $50 registration fee be paid by the registrant for each principal he plans to represent, and that separate authorizations be supplied by each principal. The agent's registration must fully identify the registrant and principal and state the matters on which the agent will act. Supplemental statements are required within ten days of any change in the facts of registration.

Reports

Annual reports of expenditures are required separately from agent (one for each principal represented), and principal (one for each agent retained), within 30 days of the legislature's final adjournment. Expenditures must be reported (by date, recipient and amount) in the following categories: transportation, lodging, entertainment, food, contributions that the lobbyist makes other than personal political contributions, and any item having a cash equivalent value of more than $25. Any expenses within a category whose total is less than $25 need not be mentioned, however. And although principals must also state the amount of compensation to each of their agents, it is not necessary to give the salary of any agent who is either a full-time employee, or on an annual retainer.

Limitations on gifts and other restrictions

NOTE.—A separate statute, the 1947 Influencing Public Opinion Act, requires that "every person, firm, corporation, association, or organization which is principally engaged in the influencing of public opinion or legislation," must register with the secretary of state—but the enforcement of the act is questionable.

The lobbying statute itself contains no other restrictions upon lobbyists.

Personal financial disclosure

A separate code of legislative ethics, also passed in 1975, compels candidates for state office and legislators to file statements of economic interests. The statement must disclose: the name of any business with which one is associated; description and location of all real-estate holdings (except for personal residence) with a fair market value of more than $5,000; the name of each vested trust in which there is an interest of more than $5,000; description of business, profession or employment including categories of customers; a list and description of any business with the state, and a list and description of professional clients charged or paid more than $2,500 in the previous calendar year.

An eight-member legislative ethics committee, with four legislators from each house, is given general oversight and administrative responsibility. The committee is to compose guidelines and issue advisory opinions upon request, investigate complaints and, at its discretion, refer discrepancies to the state attorney general for prosecution.

Penalties

Convicted willful violators of the lobbying act have committed a misdemeanor and are subject to fines of between $50—$1,000 and/or up to two years' imprisonment. Convicted legislative agents are also barred from acting as such for two years from their conviction date.

(See: General Statutes of North Carolina, Chapter 120, Article 9A, and *Instructions and Forms for Registration of Legislative Agents,* issued by the Department of the Secretary of State.)

NORTH DAKOTA

During its latest session, the North Dakota legislature defeated legislation that would have required lobbyists to wear identification badges, and it passed exemp-

tions from the lobbying law for persons who appear on their own behalf or upon request of the legislature, and for public employees acting in their official capacities.

Secretary of State

Administration of the lobbying law rests with the secretary of state, who is empowered to accept lobbyist registrations and reports (and charge a $5 registration fee), grant certificates of registration and revoke them in cases of proven violation of the lobbying provisions, and refer possible offenses to the attorney general upon the verified complaint of any person. He must also make available upon request, statements of a lobbyist's expenditures by category, and provide legislators with (and post in each legislative chamber) a current list of registered lobbyists.

For registration and reporting forms, contact: Secretary of State, State Capitol, Bismarck, ND 58505. Phone: (701) 224-2905.

LOBBYING DISCLOSURE

Who must register and report

"Lobbyists" covered by the act include anyone—except state and local government employees acting in their official capacities, and private citizens appearing on their own behalf or upon request of the legislature—who attempt to influence either legislative action, or else the decisions made by the legislative council or any of its interim committees.

Registration

Registration, accompanied by a $5 fee, is required in advance of commencing lobbying activities, and a written employer authorization is expected within ten days thereafter. All registrations expire each December 31, unless the registrant requests an earlier expiration date. The registration statement must fully identify the registrant and each entity he intends to represent, giving the duration of employment and indicating by whom the registrant is to be paid.

Reports

Reports of expenditures for lobbying are due by December 31 of any year in which a registered lobbyist's expenditures made to benefit any single individual exceed $25 in the aggregate. Once the total fair market value surpasses the $25 threshold, all expenses made to benefit that person must be revealed, along with the original source of the funds, and the purpose of the disbursement (but in the latter case, only if for those expenses individually over $25.) If the lobbyist entertains or otherwise benefits a large group of persons, the lobbying expense must be reported if the total cost divided by the number of beneficiaries is above $25.

Limitations on gifts and other restrictions

Whenever a lobbyist invites a legislator to attend a function which he or his principal has fully or partially sponsored, or offers a legislator a gift or other gratuity, he must, if the legislator so requests, supply the recipient with the benefit's true or estimated cost and allow the legislator to reimburse him.

North Dakota's lobbying laws specifies three "unlawful means to influence" legislative action: (1) to agree to give anything of value in exchange for an effort to procure legislative action; (2) to agree to receive anything of value for the reasons above, or (3) to attempt to lobby any legislator without first making known "the real and true interest" behind the lobbying involvement.

Personal financial disclosure

Every candidate for elective office and state office-holder is required to submit a financial interest statement. Any gubernatorial appointee to a state agency, board, bureau, commission, department, etc., is required to file a similar statement at the time of appointment. Statewide candidates and gubernatorial appointees file with the secretary of state, others with the county or city auditor. Disclosure requirements include the financial interests of the spouse as well. Statements must identify the principal source of income (for both), each business or trust in which a financial interest is held, all business offices or directorships as well as fiduciary relationships (held during the preceding calendar year), and those associations or institutions where there is a "close association" or on which one serves as a director or officer and which may be affected by legislative action.

The secretary of state/auditor are the depositories for financial statements and are responsible for making them available for public inspection. Prescribing forms, publishing guidelines and adopting necessary rules and regulations are the duties of the attorney general who also shares enforcement authority with the state's attorneys. Either may investigate an alleged violation but such investigation is to remain confidential until prosecution in the courts has begun.

Penalties

Violations of the act constitute a class B misdemeanor. The secretary of state is also empowered to impose a "revocation of license" penalty for convicted offenders or delinquent filers, but in the latter case only if the offender fails to notify the secretary of extenuating circumstances prior to the due date.

(See: North Dakota Century Code, Section 54-05.1-01—54-05.1-07, as amended; *Lobbyist Expenditure Reporting Guidelines* published by the Office of the Secretary of State.)

OHIO

In 1976 the Ohio legislature passed lobbying regulations, set to go into effect January of 1977, which transferred jurisdiction over the law from the secretary of state to the clerk of the senate.

Clerk of the Senate

The clerk of the senate is responsible for keeping in a public file all lobbyist statements, and prescribing appropriate forms for registration and reporting. The state attorney general may "investigate compliance" with the act, and report apparent violations to the appropriate prosecuting attorney. The law further specifies that, in the event of a dispute between a legislative agent and a legislator over what must be disclosed, the ethics committee of the appropriate legislative chamber is to investigate the matter. If the dispute arises between an agent and an executive branch officer, the matter comes under the authority of the Ohio Ethics Commission. In either event, such a complaint should be submitted in writing at least three days before the disclosure statement is due to be filed with the clerk; and if either the committee or commission determines that the disputed expenditure or financial transaction should be disclosed, the agent must do so within ten days of receiving notification to that effect. For registration and report forms, contact: Clerk of the Senate, State House, Columbus, OH 43216. Phone: (614) 466-4900.

LOBBYING DISCLOSURE

Who must register and report

The law covers "legislative agents" who are "engaged" (for compensation) "during at least a portion of" their time to influence legislation "as one of (their) main purposes." The term "influence" is treated in the law so as to cover only direct communication with a legislator, the governor or any member of his staff, and the director of any cabinet-level department.

The law expressly includes publicly supported institutions (such as universities) and instrumentalities of the state or any of its political subdivisions, in its definition of "persons" subject to characterization as "legislative agents."

Exempt from coverage, in addition to those who only solicit others to attempt to influence legislative action, are persons who "have a direct interest in legislation" and associate with others to lobby on their own behalf; persons making appearances in public meetings or before legislative committees; news media personnel engaged in normal reporting and editorial activities; advertisements placed in the bona-fide media; publications "primarily designed for and distributed to" members of bona-fide associations or charitable or fraternal non-profit corporations; and persons who only advise as to the effect of proposed legislation or help to draft measures, without actually lobbying.

Registration

Legislative agents and employers must separately file a registration statement with the secretary of the senate within ten days of their reaching a lobbying-related arrangement. (In the event that the agent has more than one employer, he must file separate statements for each.) Registrations expire December 31 of even-numbered years; if any changes occur in the information supplied in the statements during the interim, the appropriate modifications must be made within 30 days. The statements must fully identify the agent and principal, give the date of the engagement, and a brief description of the type of legislation to which the employment relates. Employer-registration forms additionally ask for the names of the entity's partner(s) or chief officer(s), and the nature of its business.

Reports

Two kinds of reports—for lobbying-related expenditures and "financial transactions"—are required.

A. *Lobbying expenditure reports.*—Reports dealing with lobbying-related expenses must be filed by both agent and employer, by January 20 and July 20 of each year. The statements must give the total amount of disbursements, except that an em-

ployer need not report those items already included in his agent's disclosure. (Also, "total expenditures" need not include costs less than $1, the salaries of the agent or employer, personal spending on food, transportation accommodations or other personal items.) When expenditures made to benefit any covered public official exceed $150 during the reporting period, the official must be named along with the amount of the expenditures and the specific legislation, if any, sought to be influenced. The costs of a dinner or other function sponsored by the registrants for public officials, must be included in the total expenditure tabulation, but need not be counted under the "$150 on a single official" threshold so long as the guest-list includes every member of either the general assembly, of either legislative chamber, of a legislative committee of either house or of a joint committee of both houses. Any official who is mentioned in an expenditure report must be notified by the reporting agent or employer, at least ten days before the filing date. When exact dollar amounts cannot be determined, "good faith estimates based upon reasonable accounting procedures" may be used.

B. *Financial transaction reports.*—A second form of report is required of any legislative agent or employer who has a "financial transaction"—defined as any exchange of value above $25, on other than fair market terms, that does not qualify as a "lobbying expenditure"—with a covered public official. The financial transaction form asks for the name of the official and a brief summary of the purpose, nature and date of the transaction. Any official mentioned in either the expenditure or financial transaction statements must be so notified by the reporting agent or employer, at least ten days before the report is officially filed.

Preservation of records

The agent or his employer must preserve the substantiating records of all reported expenditures until December 31 of the second year following the year in which the expenditures were made.

Limitations on gifts and other restrictions

In 1973 the Ohio legislature approved one of the strongest state laws to date governing outside employment of full- or part-time public officials. That law prohibits ". . . any member of a public body at any level of government from representing clients for a fee before any other agency of his governmental unit." The restriction has had a varying impact. One attorney serving on the six-member Ohio Ethics Commission, with several tax law cases pending before the state's tax department, turned the cases over to other partners in his law firm. But the law is also said to have prompted the resignation of more than 100 part-time special counsels to the Ohio attorney general, and a chairman of the state civil rights commission reportedly departed his post to avoid a conflict.

As a result of compromises made to get the conflict-of-interest law passed, its enforcement is a job for four separate entities: one committee in the senate, and another in the house, covering legislative branch personnel; a panel established by the state Supreme Court to enforce the law as it pertains to the judiciary; and the Ohio Ethics Commission, which has jurisdiction over the executive branch. Would-be reformers of the law, who advocate a more "sunshine-minded" provision which would force disclosure of outside activities rather than outright prohibition, have so far been unsuccessful.

The state's lobbying code prohibits compensation arrangements between lobbyist and employer that are contingent upon the outcome of legislative action.

Personal financial disclosure

Those required to file statements disclosing their personal finances include candidates for U.S. Congress, state, county or city office. Statements must be filed no later than 30 days before a primary or general election. Elected officials must file annual statements on or before April 15 each year. Legislative officeholders and candidates file with the legislative ethics committees; all other candidates and officeholders (except judges) file with the commission.

Statements must disclose the following: the identity of all sources of income over $500 together with descriptions of the services for which the income was received; business investments exceeding $1,000 in fair market value or businesses in which the individual holds an office or has a fiduciary relationship; Ohio real estate interests owned by the filer (excluding personal residence and that used primarily for personal rereation); debts in excess of $1,000 (excluding mortgages on personal residence and recreation property as well as those stemming from "ordinary conduct of a business or a profession"); debts owed to the filer in excess of $1,000 (excluding business debts described above)*BAD MAG TAPE**ERR01*, and all sources of gifts in excess of $500 in value.

Those who knowingly fail to file the required reports are subject to a maximum fine of $250 and/or 30 days in prison. Knowingly filing a false report is punishable by a maximum fine of $1,000 and/or six months in prison.

Penalties

Any employer or lobbyist who files a false statement of financial transactions or expenditures, is liable to the offended official who may file a civil action. Any person who knowingly fails to disclose, or who violates the contingent fee prohibition, is guilty of a fourth degree misdemeanor.

(See: Ohio Revised Code, Sections 101.70—79, and 101.99 on lobbying disclosure; Sections 1.03, 1.1.34, 102.1 to 102.9 and 102.99 (Ethics act as amended).)

OKLAHOMA

In Oklahoma, lobbying is subject to separate house, senate and statutory requirements. Governor David Boren urged legislators during the last session to approve revisions which would have incorporated the chambers' rules into law, stiffened penalties, prohibited gifts of $100-plus per session, and required reporting when total expenditures on behalf of any legislator passed $25 in a day or $200 per session. But the two bodies could not agree on a final version of the legislation (HB 1229), and it remains on the house calendar with action possible in 1978.

Attempting to influence legislative action "privately" and "for pay" is considered a crime under Oklahoma law. "Legitimate" representational activities for hire are thus limited to committee appearances and the distribution of printed materials.

Clerk of the House; Secretary of the Senate

Current regulations require require registration with both the clerk of the house and the secretary of the senate. Those offices are required to report, to their respective rules committees, the names of those persons seeking permission to be employed for lobbying purposes. For registration and report forms, contact: Secretary of the Senate and Chief Clerk of the House, State Capitol, Oklahoma City, OK 73105. Phone (405) 521-3421 (Senate); 521-2733 or 521-2711 (House).

Who must register and report

The statutory provisions on lobbying state that lobbying for compensation, other than through duly approved committee appearances or printed matter or through the media and public addresses, "is against public policy, and against the best interest of the people of the State of Oklahoma." Those who wish to make such appearances and deliver such printed materials, must first (1) file a registration statement with the chief presiding officer of the chamber before whose committee they will appear and receive written permission from that officer, and then (2) deposit 20 copies of the materials to be distributed with the appropriate chamber's chief clerk.

Registration

The so-called "request for a lobby permit" (registration statement), to be filed in duplicate, must fully identify the registrant and every principal on whose behalf he will act, including the amount of compensation and expense-reimbursement anticipated from each. The statement must be notarized, and renewed before each new legislature (beginning in odd-numbered years) during which the lobbying will occur.

The statement must be approved by a majority of the appropriate chamber's committee on rules. No person previously convicted of a felony may receive a lobbying permit. The statute also specifies that any person planning to act as an agent of any unit of state government must follow the same procedures.

Reports

All registrants must file, by September 15 of each year, a report of any single expenditure of $25 or more made for the benefit of an individual legislator during the preceding legislative session. The report must also give the total salary received for providing lobbying services.

Limitations on gifts and other restrictions

Oklahoma's lobbying statute lists a series of "crimes against the legislative power" that includes: preventing meetings of the legislature; disturbing the legislature while in session, or compelling its adjournment; intimidating or attempting to bribe a legislator; refusing to attend, or testify before, the legislature or one of its committees; and trying to alter a draft or final version of a bill. Registered lobbyists are prohibited from going onto the floor of either chamber while it is in session, except upon that chamber's invitation. The statute also forbids legislators from accepting anything of value in exchange for helping another person to find employment with any body of state government.

Penalties

The house and senate rules provide that violations of the lobbyist registration and disclosure rule be treated as a contempt of the chamber involved, and could also face suspension.

(See: House Rule 15, Senate Rule 25 and 1971 Oklahoma Statutes Title 21, Section 313.)

OREGON

Proposed changes in Oregon's lobby law that would, among other things, have extended coverage to those who lobby executive branch officials, got nowhere during the last legislative session. But two major changes were adopted exempting certain statewide elected officials and their senior aides from lobbying disclosure obligations, and removing a previous ban on lobbyists for private interests serving on state boards and commissions.

Oregon Government Ethics Commission

The seven-member commission has full responsibility for administering and enforcing the state's lobbying and ethics laws. It collects registrations and reports and is empowered to write administrative rules and procedures (and issue advisory opinions at its own discretion), conduct investigations with or without written complaint, subpoena witnesses or documents, and impose penalties.

For registration and report forms, and a copy of its Administrative Rules and Procedures, contact: Oregon Government Ethics Commission, Room 102, Public Service Building, Salem, OR 97310. Phone: (503) 378-5105.

LOBBYING DISCLOSURE

Who must register and report

"Lobbying" is defined as "influencing or attempting to influence, legislative action" (including "any matter which may be the subject of action" by the legislature, or any of its committees). The act's coverage applies to three categories of "lobbyists": (1) anyone who "is compensated or receives a consideration of any kind for lobbying," and spends more than 16 hours lobbying during a calendar quarter; (2) any non-compensated person who makes lobbying-related expenditures of $50-plus during any reporting period (not counting personal travel, food and lodging), and (3) any public official (other than those elected to statewide constitutional offices) who lobbies on behalf of a public agency.

Excluded from coverage, however, are: any person whose lobbying activities, outside formal committee testimony, consume less than 16 hours quarterly; persons who restrict their activities to formal, on-the-record committee appearances and receive no additional compensation for making them; legislative officials acting in an official capacity; and news-media personnel performing "newscasting, reporting or editorial functions."

Registration

Persons and public agencies subject to the law must register within three days of triggering any of the thresholds detailed above. (In the event that the three-day deadline cannot be met, a letter or telegram from the lobbyist's employer will suffice as an interim registration until a full statement can be filed.) A separate registration statement must be filed on behalf of each principal represented. Registration is valid until the registrant indicates, by means of a written termination statement, that the lobbying activities have ceased.

The registration statement must full identify the lobbyist and his principals (including a "general description of the trade, business, profession, or area of interest" of the latter), give the date that lobbying activities began; and name any legislators employed by the lobbyist's employer, or with whom the lobbyist "shares a business interest."

Reports

Three types of reports are required: (a) monthly in-session expenditure statements to be filed by lobbyists; (b) quarterly out-of-session reports also by lobbyist, and (c) annual expenditure statements, to be submitted by lobbyist-employers.

A. *Monthly Lobbyist Reports.*—Such reports are required by the last day of the month following any month in which the legislature met in regular session. All lobbying-related expenditures for the period must be reported, categorized by: food, beverage, and entertainment; printing, postage, and telephone; advertising, public relations, education and research; and miscellaneous. (The lobbyist's report need not include general overhead costs for office space and equipment and support personnel.) The administrative rules issued by the commission specify that an expense

must be disclosed "if there is any relationship to influencing legislative action," such as those incurred "in order to get acquainted or promote goodwill . . ."

B. *Quarterly Lobbyist Reports.*—Such reports cover periods during which the legislature did not meet in regular session, and are due by April 30 (covering Jan. 1–March 31); July 31 (for April 1–June 30); Oct. 31 (for July 1–Sept. 30), and Jan. 31 (for Oct. 1–Dec. 31). (If the legislature met during only part of a quarter, monthly reports should be prepared to cover that part, and a quarterly statement submitted for the remainder.) The quarterly statements should contain information similar to the monthly ones.

C. *Annual Employer Reports.*—Annual expenditure reports are required from every employer of a registered lobbyist, by each January 31. They must show total lobbying-related expenditures, including lobbyist-compensation and the cost of overhead and support services, but not including personal living expenses incurred during legislative sessions. Itemizations are not necessary, although all the amounts enumerated in the lobbyists' reports must be reflected in the employer's total. The report must also list (by recipient, date, purpose, amount and payee), every expenditure over $25 made for the benefit of a legislative or executive branch official. Employers should also attempt a "good faith apportionment" of expenditures for public affairs programs which are tied to influencing legislative action, and report that amount.

Political contributions, if properly disclosed under the separate campaign contribution law, need not be included in either the lobbyist or employer reports.

Limitations on gifts and other restrictions

The state's separate Conflict of Interest Law prohibits any public official from soliciting or accepting gifts with an aggregate value over $100, during a calendar year, from "any single source (whether or not a registered lobbyist or lobbyist-employer) having a legislative or administrative interest in a governmental agency in which the official has any official position or over which the official exercises any authority."

Oregon's Lobby Disclosure Act enumerates certain other "prohibited actions": arranging the introduction of legislative matters in order to be employed to work for their defeat; attempting to influence a legislator's vote with assurances of future financial support or opposition; compensation arrangements between lobbyist and principal contingent upon the success of lobbying activity; and knowingly or willfully making false or misrepresentative statements to a legislative or executive branch official. The statute also specifies that, during a legislative session, "no lobbyist shall make or promise to make any monetary payment or other contribution for the purpose of meeting campaign expenditures or deficits to a legislative official," and bans officials from asking or receiving such payments.

Personal financial disclosure

Officeholders and candidates for state office must file annual statements with the commission. Reports must include the following: all business offices and directorships held during preceding calendar year; sources of income that comprise 10 percent or more of the total annual household income; name, address and description of the source of income that comprises 50 percent or more of the household income, etc. Additional reporting requirements are added if the source of the financial interest has been or could reasonably be expected to do business with the governmental body of which the officeholder is a member.

Failure to file a statement may result in the removal of the candidate's name from the ballot by the secretary of state; an officeholder may be denied his salary or his official powers.

Penalties

The Commission is empowered to initiate investigations upon its own information, or upon the written complaint of any person. A maximum $250 civil fine may be levied against individuals for violation, while offending corporations, associations and other groups may be fined up to $1,000.

(See: The Oregon Lobby Disclosure Act, Oregon Revised Statutes 171.725—.785, and 171.992; and *Administrative Rules and Procedures for Lobbying Registration and Reporting,* issued by the Oregon Government Ethics Commission.)

PENNSYLVANIA

Pennsylvania's registration-only lobbying law was thoroughly revised in 1976. It now applies to those who lobby administrative as well as legislative officials, and contains expenditure and compensation thresholds above which registration and periodic reporting are necessary. Early in 1977, the senate secretary and chief clerk of the house jointly issued a set of Proposed Guidelines for Implementing the

Lobbying Registration and Regulation Act—which were found so "controversial," according to one aide, that they were withdrawn, and lobbyists left to "interpret the act for themselves."

Secretary of the Senate; Chief Clerk of the House

The secretary of the senate and chief clerk of the house are responsible for administering the state lobbying code. The law also requires the secretary and chief clerk to compile lists of registered lobbyists for publication in the legislative journal each month during which the legislature meets, and to keep all disclosure statements available for public inspection and copying. For registration and report forms, and a copy of the Guidelines, contact either the Secretary of the Senate or Chief Clerk of the House, State Capitol, Harrisburg, PA 17120. Phone: (717) 787-5920 (Senate); 787-2372 (House).

LOBBYING DISCLOSURE

Who must register and report

"Lobbyists" are required to register and report if they either (1) are "employed or engaged for compensation" (of more than $500 in a calendar year), or (2) expend more than $300 during any month, and on behalf of any one person (not counting personal expenditures or office overhead), for lobbying purposes. Current lobbying regulations specify that if an individual's lobbying activities are "inextricably bound up" with other employment duties, so that an estimate of the pro rata share of salary attributable to lobbying is not possible, the individual will be presumed to have exceeded the $500 threshold. When attorneys are retained partially to lobby, or when a breakdown of an employee's lobbying and non-lobbying time is possible, the regulations state that the estimates of lobbying-related compensation are to be made "on a functional basis." The term "lobbying" covers advocating legislative action to a legislator, legislative staff member, agency official, and the governor or any of his staffers. It also includes efforts to influence agency officials with regard to "formal action" (covering the promulgation, amendment, or repeal of any regulation).

Exempted from coverage are those who limit themselves to presentations of testimony before legislative committees or state agencies, and to "formal communications" (made in writing and at the request of an agency or legislative official). State or local public employees acting in their official capacities are also exempt.

Registration

Individuals defined as "lobbyists" must register with both the secretary and chief clerk within five days after first engaging in lobbying; such registrations expire each December 31. Supplemental registrations are required within five days after a registrant either begins to represent, or begins to receive compensation from, an additional interest. The registration statement must fully identify the lobbyist and his employers, and specify whether the expected duration of employment is indefinite or limited.

Reports

Reports are required at six-month intervals from lobbyists who exceed the $300 in any calendar month expenditure threshold during that particular reporting period. Such reports are due on January 30 and July 30, covering the periods July 1-Dec. 31 and Jan. 1-June 30, respectively. If the lobbyist fails to file a required report, his employer(s) must report the amount advanced or reimbursed the lobbyist during the reporting period. The reports must break down expenditures by each employer on whose behalf they were made. The items must be further broken down by month, and categorized by: meals, entertainment; cost of communications with the General Assembly, the Governor, the governor's staff, and with agencies; and other expenditures. (The lobbyist's personal meals, entertainment, lodging and travel, need not be reported.) The report must also name and give the official position of any elected or appointed state official who receives any pecuniary benefit in excess of $150.

Limitations on gifts and other restrictions

The 1976 amendments included a prohibition of compensation arrangements conditioned upon legislative action, or upon any formal action taken by an agency.

Penalties

Violations of the lobbying law by natural persons constitute a third degree misdemeanor, punishable by a fine of up to $2500 and/or imprisonment for up to five years; in addition such persons may be disqualified from acting as lobbyists for five years following the date of conviction. Violations by other than natural persons carry possible fines of up to $2500.

(See: Act of 1961, P.L. 1778, No. 712, as amended in 1976 by Act No. 212, P.L.1051.)

RHODE ISLAND

A complete overhaul of the Rhode Island lobbying law took place in 1975, and the number of required disclosure reports was reduced to three in 1976. Legislative proposals to require that lobbyists wear identification badges, as well as to exempt uncompensated "volunteer" lobbyists from coverage, have been carried over for possible early consideration in the next legislative session. A court challenge to the Rhode Island lobbying law's broad applicability, filed by the state chapter of the American Civil Liberties Union and other groups (*Rhode Island Mental Health Association, et al.* v. *Burns*), still awaits resolution.

Secretary of State

Rhode Island's secretary of state, responsible for administering the law, is to keep two legislative dockets—of legislative counsel and legislative agents—open to public inspection. He must also collect registration and reporting forms and employer authorizations, and issue identification cards to those who comply with their requirements. The state attorney general may initiate prosecutions.

For registration and report forms, contact: Secretary of State, State House, Providence, RI 02903. Phone: (401) 277-2357.

LOBBYING DISCLOSURE

Who must register and report

Disclosure is required of an individual who either: (1) is compensated or reimbursed, or spends $100 or more in a year as counsel or agent on behalf of someone else, or (2) is an officer or employee of a for-profit or non-profit organization, and represents that group, in attempting to affect legislative action.

A person need not register, however, if an official at any level of a governmental entity and acting in an official capacity, or if the principal involved is a public corporation.

Registration

Within one week of arranging to be represented by a lobbyist, an organization must file a registration statement fully identifying both parties, the date of employment and its intended duration, and the "full and exact title" of each legislation on which the lobbyist will work. The agent and principal must both sign the statement. The registrant must provide an employer authorization within ten days. The employer must supplement the original statements whenever new legislative subjects become the focus of lobbying activity.

(NOTE.—The names of registrants are to be entered in two separate dockets, according to whether they are to appear before legislative committees and make arguments or otherwise act as counsel on behalf of a principal (legislative counsel), or are retained to engage in other forms of lobbying activity (legislative agents). The distinction must be made by the employer at the time of registration.)

Reports

Reports—both from registrants and their employers—of lobbying expenditures are due on three occasions: by the 35th day of a legislative session; by the 55th day; and within 30 days of final adjournment (or following any recess of more than 10 days). If no compensation or expenses are incurred for a reporting period, a statement to that effect may be substituted. The reports must list every expenditure, honorarium, gift or (other than political campaign) contribution of $25-plus as well as the beneficiary, amount, and purpose. Both employer and lobbyist reports must also give the amount of compensation paid the lobbyist.

Limitations on gifts and other restrictions

In 1976 the state legislature enacted tough conflict-of-interest legislation requiring personal financial disclosure by public officials, and placing constraints upon their post-public employment and extra-curricular activities. The law states that no elected or appointed state or local official may: (1) have a direct or indirect interest of any kind in a business, or other activity (which is in substantial conflict with the proper discharge of his duties"; (2) accept outside employment which would either "impair his independence of judgement" or induce disclosure of confidential information; (3) knowingly and willfully disclose confidential information for pecuniary gain; (4) use his public office for the financial gain of himself, dependents or business associates; (5) act as an expert witness, on his own behalf or on behalf of someone else, before the unit of government that employs him, except in an official capacity; (6) appear before a former government employer in a representative capacity for one year following the official and of employment (excepting court appear-

ances), or (7) enter into (or allow his dependents or business associates to enter into) a state contract, unless it is awarded on an open and public basis, if his interest in the business involved reaches 10 percent or $5,000. The law also prohibits the solicitation or acceptance of (as well as the offer of) a gift, loan, political contribution, reward, etc., to any official or candidate (or their dependents and business associates). Use of the information disclosed under the law for commercial purposes is prohibited.

The law specifies that an individual registered as a "legislative counsel" may not do other than appear before legislative committees or make preparations for such appearances, or perform strictly legal duties, unless he additionally registers as a "legislative agent." Employment arrangements where compensation is contingent upon a particular legislative outcome, are also forbidden.

Personal financial disclosure

Under the conflict of interest law, those elected to state or municipal office are required to file statements disclosing their personal finances and those of their spouses and dependent children annually by the last Friday in April. Candidates must submit such statements to the Conflict of Interest Commission within 30 days after the filing deadline for declaring candidacy.

Statements must disclose the following: (1) the identity of all sources of occupational income; (2) all real property in which a financial interest was held (excluding principal residence); (3) the source of all income received as a trust beneficiary and each asset (if known to the beneficiary) from which income was received in excess of $1,000; (4) the name and address of each business entity in which a person serves as a member of the board of directors or in an executive position; (5) the date and nature of "any business" transacted between the filer (his spouse, or dependent children) or a business entity in which he holds at least 10 percent (or $5,000) equity interest and which is subject to direct regulation by a state or municipal agency or with the agency itself; and the name and address of any business entity in which the filer or his family held a 10 percent (or $5,000) equity interest disclosed in (5).

Additionally, a public official must make periodic reports concerning his interest in business entities subject to direct regulation by a state or municipal agency or which do business with such agency in which he holds, acquires or directs an equity interest of 10 percent (or $5,000) or more.

The use of information copied from financial disclosure statements for commercial purposes is prohibited.

Penalties

Violation of the lobbying law by the employer of a legislative agent or counsel, including delinquent filing, is punishable by a fine of between $200–$5,000. Offenders who are agents are liable to receive fines between $100–$1,000, and be "disbarred" from acting in a lobbying capacity for three years from their date of conviction. The state attorney general is responsible for initiating prosecutions.

Violation of Rhode Island's conflict-of-interest code carries, in addition to possible civil penalties, fines of up to $500 and/or imprisonment for up to a year; the offending official may also forfeit his public office.

(See: "Laws of the State of Rhode Island Pertaining to Lobbying," General Laws of 1956, Title 22, Chapter 10 as amended, on lobbying disclosure; and Chapter 93, Public Laws 1976 as amended by Chapter 275, Public Laws 1976, on conflicts-of-interest.)

SOUTH CAROLINA

The South Carolina legislature currently has numerous measures affecting lobbying disclosure before it, among them proposals that would prohibit lobbying with public funds, and transfer administrative and enforcement responsibilities to the state ethics commission. None of them, however, is given much chance of passage.

Secretary of State

The lobbying statute lies within the jurisdiction of the secretary of state, who is charged with prescribing appropriate disclosure forms, keeping statements open to public inspection, issuing identification cards upon registration, and providing a current list of all registered lobbyists to legislative committee chairmen at monthly intervals, and to all other legislators on a quarterly basis. Actions to enforce the law may be initiated by the state attorney general upon receiving a complaint.

For registration and report forms, contact: Secretary of State, State Capitol, Columbia, SC 29211. Phone: (803) 758-2744.

LOBBYING DISCLOSURE

Who must register and report

The law obliges registration of "legislative agents," defined as those who are "employed, appointed or retained, with or without compensation," to "promote or oppose in any manner" legislative action. (A separate definition of "lobbying," however, limits coverage to "direct communication with members of the General Assembly or their staff," and this is the interpretation which has been given the law's applicability to date.)

The law specifies six categories of exemptions: (1) individuals who lobby to express only a personal opinion; (2) lobbying limited to legislative committee appearances by invitation; (3) public officials at any level of government, acting on official matters; (4) persons performing professional drafting or advisory services, but who do not try to affect legislative action per se; (5) persons connected with the mass media who urge legislative positions, so long as they do not otherwise lobby, and (6) persons representing established churches solely to protect their members' rights, the doctrines of those churches, or other matters "deemed to have an adverse effect upon the moral welfare of the membership."

Registration

The employer of a legislative agent must cause his registration within 10 days of his hiring, but in any event before he begins lobbying on the employer's behalf. The registration statement must be accompanied by an employer authorization and a $10 fee; it is good until terminated by the registrant or his employer. The statement must fully identify the agent and employer and give nature of the latter's business and (if an organization) the size and composition of its membership. The subjects of legislation to which the employment relates must also be identified.

Reports

Legislative agents must file one annual "statement of expenses," within 30 days of the legislature's final adjournment giving an itemized accounting of those lobbying expenditures (including transportation, meals, merchandise, postage, and supplies) that were paid or incurred or promised in connection with lobbying activities. The report must also include the agent's salary.

Limitations on gifts and other restrictions

Compensation arrangements between agent and employer contingent upon a legislative outcome, or upon "any other contingency connected with the action of the General Assembly," are not allowed.

In 1975 the legislature enacted an ethics code which, in addition to creating a six-member State Ethics Commission, focuses principally on set new rules of ethical conduct for state officials and employees. The "Rules of Conduct" section of the act specifies that no public official may: (1) use his position for personal financial gain; (2) solicit or accept compensation for either his public actions, or the rendering of advisory services in the course of his official duties; (3) disclose confidential information for personal financial gain; (4) serve with a regulatory commission that has jurisdiction over any business with which he is associated (as either an officer, employee, or owner of an interest worth $10,000–plus, or in a client relationship); (5) appear before the South Carolina Public Service Commission, Dairy Commission or Insurance Commission in rate-making or price-fixing matters (also applicable to associates in a law firm of a state legislator); (6) enter into or allow his business associates to enter into a contractual relationship with the state awarded other than through public and competitive bidding; (7) offer or accept an offer of anything of value (including an offer of future employment) from a person who brings matters before his agency, or (8) represent clients before a former agency-employer within two years of leaving that agency.

An administrative official is required to file a written statement with his superior (or, if he has none, the state ethics commission) in the event that the discharge of his duties would substantially affect his personal financial interests. Legislators in the same position must give such a statement to the presiding officer of the appropriate house.

Personal financial disclosure

Elected or appointed state officials, legislators, and candidates for public office, must file a statement of economic interests at the appropriate supervisory office. The statements must include all offices, directorships and fiduciary relationships held by the official if an economic interest exists; a description of all real estate in which he or a member of his household has any interest, direct or indirect, including options to buy, if such interest can reasonably be expected to be in conflict with his public position; the nature, source and amount of all fees, compensation and

benefits of any nature received directly from the state or any administrative agency or department, or directly from the county, district or political subdivision he represents. Updates of the statement must be filed by April 15 of each calendar year.

Penalties

Violation of the lobbying statute by either a legislative agent or his employer is a misdemeanor, and carries a fine of between $200–$500, or jail-terms of up to 60 days, at the court's discretion.

Offenses committed under the ethics act are misdemeanors calling for maximum $1,000 fines.

(See: South Carolina Code of Laws of 1976, Title 2, Chapter 17, on lobbying; Title 8, Chapter 13, on ethics.)

SOUTH DAKOTA

Toward the end of this year's session, South Dakota legislators approved a "hog-house amendment"—essentially new legislative material grafted onto an old bill number in order to get it on the legislative calendar—that thoroughly revised the state's lobbying code.

Secretary of State; Attorney General

The secretary of state, responsible for administering the new lobbying statute, must maintain a public docket of registered lobbyists, collect a $10 registration fee, issue identification badges, and prescribe reporting forms. It is the duty of the state attorney general, upon information, to prosecute apparent violations.

For registration and report forms, contact: Secretary of State, State Capitol, Pierre, SD 57501. Phone: (605) 224-3537.

LOBBYING DISCLOSURE

Who must register and report

Persons required to be registered are those "employed" to influence action on legislation "affecting the special interests of any agency, individual, association, or business, as distinct from those of the whole people of the state . . ." (In an important opinion (75–183), the state attorney general determined that "employment" could mean expense-reimbursed as well as salaries activity.)

The act specifically applies to executive branch officials who are neither elected nor confirmed by the state senate, and are authorized to "officially represent any department of the executive branch in any capacity before the legislature or any of its . . . committees . . ." They are exempted, however, if they only testify on budgetary matters before the appropriations committees of the legislature.

The law is held not to apply to: public corporations, members of the governing board of any local governmental unit; bona fide representatives of church organizations engaged in protecting religious freedoms; and individuals who do no more than appear before any legislative committee or administrative board or commission to speak on their own behalf.

Registration

It is the responsibility of the employer or lobbyist to register within one week after the date of employment. An employer authorization is due from the registrant 10 days thereafter. There is a $10 fee chargeable to the lobbyist for each employer he represents; an additional $50 payment entitles him to one copy of all bills, resolutions and journals of the current legislative session. (Executive branch lobbyists as defined above need not pay the fee.) The registration statement should fully identify the lobbyist and each employer, give the date of employment and the expected length of time it is to continue and the legislative subjects to which the employment relates. Supplemental statements are necessary whenever further subjects of legislation arise, or new employers are added, and the full statement must be renewed annually.

Reports

Reports are required separately of registered lobbyists and each of their employers, by January 10, to cover their activities during the previous year. The new act calls for the reporting of all lobbying-related costs (except compensation paid to the lobbyist, and his personal expenses for meals, travel, lodging, phone calls or "other necessary personal needs").

Limitations on gifts and other restrictions

The new lobbying statute prohibits the following practices: compensation relationships contingent upon any form of legislative action; going upon the floor of either

legislative chamber as a lobbyist while the chamber is in session, except by invitation; attempting to influence the legislature by positive or negative inducements; and lobbying for private pecuniary interests if a Federal or state official.

Personal financial disclosure

Incumbents, as well as candidates for U.S. Senate, House of Representatives, governor and lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, supreme and circuit courts, and the state legislature, must also file statements of personal financial interests that are made public.

Those required to file must disclose the following: the principal source of income, occupation or profession of the filer and spouse; a list of enterprises that contribute 10 percent or more (or $2,000) to the family income in the preceding calendar year; a list of enterprises in which the filer, spouse or their minor children control 10 percent or more of the capital stock and the nature of the association which the filer or spouse has with enterprises disclosed above. Value is not disclosed.

Penalties

Violations of the lobbying code are classified as class 1 misdemeanors, leading to three years prohibition from acting as a lobbyist in addition to a possible $1,000 fine and/or 12 months in jail.

(See: South Dakota Code of Laws 2-12-1—2-12-6, as amended by HB 901 in 1977.)

TENNESSEE

It is said that one day in 1975 an attorney, at work for the Tennessee legislature on the enforcement section of a draft lobbying—disclosure bill, looked out his window toward the state library building. At that moment, the story goes, he discovered the ideal administrators for a lobbying law—"the most honest people in government, acting without favoritism and accustomed to dealing with researchers, filing-systems and records." Whether or not the tale is true, Tennessee today is still the only state that vests administration of its lobbying disclosure statute in the state librarian and archivist.

State librarian and archivist

The responsibilities of the state librarian and archivist in the lobbying area include: prescribing the necessary disclosure forms; preparing an instruction manual for lobbyists and their employers; preserving filed statements for five years and making them available for public inspection and copying; developing filing, coding and cross-indexing systems; and making compilations of the materials gathered.

The office of the state librarian is also authorized to promulgate administrative rules and regulations, and to seek and then publish advisory opinions from the state attorney general on questions which lobbyists or officials bring to its attention.

The attorney general is called upon to inspect each statement filed with the librarian within 30 days of its filing date, and to notify the filer immediately if the disclosure is incomplete or otherwise deficient, or if the librarian has received a sworn complaint alleging that the report is not in compliance or in some way false.

For registration and report forms, contact: State Librarian and Archivist, 403 Seventh Avenue, North, Nashville, TN 37219. Phone: (615) 741-2451.

LOBBYING DISCLOSURE

Who must register and report

Tennessee's law contains a two-tier "trigger" for determining who must register as a "lobbyist." Registration is required of those who (a) make "direct personal contact" with a legislative or executive branch official for the purpose of influencing either legislative or administrative action (the latter including any report, rule or regulation or other matter of a "quasi-legislative" nature under consideration within the executive branch), and (b) spend more than $200 (not including membership dues) during any annual reporting period to solicit other persons (other than hired registered lobbyists), either directly or through advertising, to try to influence legislative or administrative action. Any state official in the executive or judicial branches who is responsible for exceeding the $200 trigger would be covered as a lobbyist, whether he makes direct personal contacts himself or encourages others to do so.

Exempt from coverage under the law are the furnishing of studies, statistics or other information to an official at his request and testifying at publicly held hearings, and individuals who lobby solely on their own behalf, without spending over the $200 threshold. Public officials performing their official duties, and members of the press engaged in news-gathering and dissemination activities, are exempted so long as they do not engage in lobbying that "would directly and specifically benefit

the economic, business, and professional interest of such person(s) or their employer." A final exclusion applies for persons, such as attorneys, who act to determine or obtain the legal rights of a client through the presentation or written briefs, oral arguments or evidence, and who do not violate the "of direct benefit" proviso above.

Registration

Within five days of becoming a lobbyist, an individual must register with the state librarian, and furnish written proof of authority to lobby on behalf of each employer. Each registration and annual renewal must be accompanied by a $25 fee (unless the registrant is a state official, in which case the fee is waived). The registration statement must fully identify the registrant and each of his clients or employers, and include a list of the "general categories of subject matter" on which lobbying will occur; and accompanying authorization from each listed client so listed is also required. Supplementary statements should be made within 15 days of any change in the clients represented, or the lobbying subject-matter.

Reports

Reports of lobbying expenditures and business relationships with public officials must be filed annually, within 30 days of the end of a regular legislative session, to cover the period since the last report. The report must contain (1) details of any "direct business arrangement or partnership," entered into after July 1, 1975, with any legislative or executive branch official or candidate for public office and (2) an itemized listing (by date, beneficiary, amount and circumstances) of each "gift" (including anything of value except commercially reasonable transactions or trades of equal financial consideration, or gifts to family-members) of $25-plus, and each political contribution of $100-plus, given directly by the registrant or at his direction to a covered official or to a staff-or family-member or an affiliated campaign committee.

Limitations on gifts and other restrictions

Certain "lobbying tactics" are forbidden under the lobbying law, including: offering valuable considerations based on "any stated or tacit understanding" for influencing official action; knowingly and willfully making false statements in the course of lobbying; loaning money to officials or candidates under any circumstances; and filing a false complaint charging violation of the lobbying law, with the intent to harass.

Penalties

Registrants who are delinquent in their report-filing are given ten days after notice from the state librarian to correct the situation, or have their registration suspended. In that event the suspension stays in effect until the missing reports are filed. Any other violation of the act constitutes a misdemeanor.

(See: Tennessee Lobbyist Registration and Disclosure Act of 1975, Tennessee Code Annotated, Chapter 6, Section 3-601 through 3-610).

TEXAS

In 1971-72 Texas was hit by the so-called "Sharpstown scandals," a string of revelations of corruption at the highest levels of state government. By 1973, Texas had a new governor, lieutenant governor, attorney general, reform-oriented house speaker, and—less than a year later—a completely new lobby control act and public official financial disclosure law.

Secretary of State; Attorney General

The secretary of state is empowered to prescribe appropriate disclosure forms, and collect the completed statements. The attorney general issues advisory opinions in response to specific requests. (The most thorough of those interpretations to date was an April, 1975 response to 45 questions posed by a state senator.)

For registration and report forms, contact: Office of the Secretary of State, Enforcement Division, P.O. Box 12887, Capitol Station, Austin, TX 78711. Phone: (512) 475-5619.

LOBBYING DISCLOSURE

Who must register and report

Registration is required of a person who either: (a) spends more than $200 in a calendar quarter (not including personal food, travel or lodging, or membership dues), or (b) receives any compensation or reimbursement from another party "within the scope of regular employment," to "communicate directly" with any elected or appointed candidate or official of the legislative or executive branches, to influence legislation.

The attorney general has interpreted the "within the scope of regular employment" modification to apply to communications that are made "on behalf of and at the express or implied direction of" the employer, regardless of whether any salary allocation for lobbying is made. "Direct communication" is defined as "contact by telephone, telegraph or letter." "Legislation" as used in the law covers matters pending or liable to come before the legislature or any of its committees, or a constitutional convention.

The statute, however, provides exemptions for: state officials acting in an official capacity; employees of bona fide news media who disseminate news or editorial comment or accept paid advertisements "in the ordinary course of business"; persons who only appear before an official committee and receive no more than actual expenses; persons who lobby only through grass-roots, or "indirect" methods; and employers of registered agents who do not direct lobbying themselves.

The attorney general has held that employees who merely respond to an inquiry by a public official must register only if their usual duties entail handling communications with such officials.

Registration

Registration is required within five days after the first direct contact that would subject an individual to the act's coverage, and is valid until terminated.

The statement must fully identify the registrant and give his "normal business," disclose the name of each person "who paid a membership fee, dues or other assessment" above $500 during the previous calendar or fiscal year to the registrant or his employer (whether or not the contribution was exclusively lobbying-related); give the number of members of the sponsoring group, if other a corporation; provide a "full description of the methods" by which the registrant develops and make decisions about the sponsoring group's policies; and a list—including bill numbers, if known, and the group's position—of the legislative matters on which lobbying is occurring. A termination notice is to be filed whenever a registrant ceases direct lobbying.

Reports

Registered lobbyists must file "supplemental registration and activities reports": (a) between the first and 10th day of each month following any month in which the legislature was in session (covering the prior month's activities), and (b) between the first and 10th day of a month following the end of any calendar quarter during which the legislature was out-of-session (covering the prior quarter's activities.) These reports should categorize direct lobbying-related expenditures made by the registrant or on his behalf, for postage; telegraph; publications and printing; entertainment (including transportation, dining, lodging and other related items); and gifts or loans other than campaign contributions. The reports also supplement the registration statements with an updated list of legislation subject to direct lobbying.

Limitations on gifts and other restrictions

The state's substantial ethics code provides that no legislator may, for compensation, represent another person before a state agency, unless that matter is either "adversary in nature" or part of an on-the-record public hearing, or involves only ministerial acts. Additionally, no state officer may: accept or solicit any "gift, favor or service" that "might reasonably tend to influence" his discharge of official duties; undertake outside employment or business or professional activity that could reasonably be expected to cause such conflicts, or "impair his independence of judgment in the performance of his official duties"; make personal investments reasonably expected to entail a "substantial conflict"; or intentionally solicit, accept or agree to accept any benefit for having performed official duties favorable to the giver. The penal code further limits a legislator to accepting honoraria "for legitimate services" at a rate of not more than one per service per year, and honoraria may not individually exceed $250.

Personal financial disclosure

Personal financial disclosure is required of state officeholders and candidates, major appointees, heads of state agencies, members of the judiciary and state employees with substantial responsibility.

On or before the last Friday in April of each year, officials covered under the state's ethics law must submit statements of personal financial holdings to the secretary of state. New appointees must file such statements within 30 days after assuming office. Heads of state agencies must complete the reports within 45 days after taking office. Political candidates must file their personal finance statements within 30 days after the filing deadlines for the offices they seek.

Statements must disclose the following: sources of occupational income or businesses in which the filer has a "substantial interest"; stocks, bonds and notes; income of more than $500 from interest, dividends, royalties and rents; beneficial interests in real property or business entities; gifts valued in excess of $250 (those from relatives are exempted); income from trusts and all assets and liabilities of any corporation in which 50 percent or more of the outstanding stock was held, acquired or sold. Value is disclosed by category, i.e., less than $1,000; at least $1,000 but less than $5,000; and $5,000 or more. The same format is used to report stock holdings; less than 100 shares, at least 100 shares but less than 600 shares, etc.

The financial statement also must include a list of all boards of directors of which the person is a member and all executive positions that he holds in corporations, firms, partnerships and proprietorships.

Individuals violating these regulations are subject to removal from office, and can be prosecuted for a Class B misdemeanor.

Penalties

Violations of the lobbying control law constitute a Class A misdemeanor, with the exception of the contingent fee provision is a third degree felony. In addition to the normal penalties for such offences, the law carries a fine of three times the amount of any compensation, expenditure or reimbursement that went unreported.

(See: Texas Lobby Control Act, Article 6252-9c, Vernon's Texas Annotated Civil Statutes, on Lobbying; Article 6252-9b, on Ethics.)

UTAH

Prior to passage to Utah's registration-only law in 1975, the state was one of only two—the other being Hawaii—without any lobbyist disclosure requirement whatsoever.

Secretary of State

Administrative duties are vested in the secretary of state, who must keep a public docket of all registered lobbyists and make weekly reports of its contents during legislative sessions, preserve all required information for five years (and then destroy it), and assess a licensing fee. The attorney general investigates and prosecutes apparent violations.

For registration and report forms, contact: Secretary of State, Room 211, Capitol Building, Salt Lake City, UT 84114. Phone: (801) 533-5115.

LOBBYING DISCLOSURE

Who must register and report

Persons who receive "any contributions or compensation," or who expend "any money" for the purpose of trying to influence any legislative or administrative action, must register.

The law does not, however, apply to: persons who appear before a legislative or executive committee on their own behalf; elected or appointed officials acting in an official capacity and on matters pertaining to their office; persons who merely perform legislative drafting or counseling services; "attorneys representing clients before a court or quasi-judicial body" (held to apply to lawyers acting in a judicial capacity); representatives of political parties or "political organizations"; persons lobbying, on behalf of a bona fide church and on the issue of religious freedom; and news media personnel who dispense news and editorial comment as part of their normal functions.

Registration

Before "lobbying," as defined above, an individual must register with the secretary of state, identifying himself, his employer and any agent who will lobby on his behalf, and any other party by whom he is to be paid; and indicate for what expenses he is to receive reimbursement.

A $10 "license fee," accompanied by the registration statement, gives the lobbyist a permit which expires on December 31 of even-numbered years. (Applications for such permits may in fact be disapproved, if a hearing held within ten days of the application shows the applicant somehow unworthy; such action has never been taken, however.) Supplemental statements are mandated in order to keep each registration up-to-date.

Reports

No reports are required under Utah lobbying law.

Limitations on gifts and other restrictions

The separate Public Officers and Employees Ethics Act prescribes rules of conduct for elected officials and state employees. It prohibits public officials from using their positions for personal gain, and from accepting employment that might impair their "independence of judgment."

The lobbying statute further prohibits employment arrangements whereby compensation is contingent upon a legislative outcome, and labels "improper," efforts to influence a legislator by contacting his employer. Knowing falsification or misrepresentation of information for the use of a legislator or other state officer, constitutes a misdemeanor.

Personal financial disclosure

Any public official who is a director, officer or owner of a substantial interest (defined as 10 percent of ownership) in a business subject to the scrutiny of a state regulatory agency, must file a statement disclosing the "precise nature and value" of such holding. This statement is submitted before assuming office and again during January of each year that the individual is in office.

No public officer may receive compensation for assisting or representing a business before a state regulatory agency unless a statement outlining the transaction has been filed with the secretary of state and the head of the agency for which the official works. Statements must list the name and address of the business being represented and give a brief description of the transaction.

Violators of this provision are guilty of a misdemeanor and forfeit their office.

Penalties

Knowing and willful violators of the act are guilty of a Class C misdemeanor, and upon conviction have their registrations revoked and are prohibited from re-registering for one year.

(See: Lobby Registration Act of 1975, Utah Code Annotated, Sections 36–11–1—36–11–9.)

VERMONT

A broad revision of Vermont's lobbying law, instituting a definition of "lobbying" and a new reporting requirement, went into effect in July 1976. Since then, the legislature has approved an amendment qualifying the definition such that only employees who are paid "specifically" to lobby are covered.

Secretary of State

The secretary of state, responsible for administering the law, prepares a list of registered legislative counsel, agents and their employers for monthly publication in the house journal while it is in session; collects registration and report statements and accompanying $5 registration fees. The state attorney general and/or state's attorneys have authority to enforce the act's provisions and to ask the superior court to enjoin an offending counsel or agent until the offence is corrected.

For registration and report forms, contact: Secretary of State, Pavilion Office Building, Montpelier, VT 05602. Phone: (802) 828-2363.

LOBBYING DISCLOSURE

Who must register and report

Coverage of the law extends separately to legislative counsel ("who for compensation appear at any public hearing before committees of the legislature with the purpose of influencing any legislative action"), and legislative agents ("who do, directly or indirectly," any other act to influence legislative action). "Compensation" as defined includes portions of regular employment salaries that are allocable to lobbying activities.

The act does not apply to: mere legislative committee appearances at a committee's request; elected or appointed public officials at any governmental level "acting solely in connection with matters relating" to their offices and public duties; and news-media personnel engaged in reportorial or editorial activities.

Registration

Before being so employed, a legislative agent or counsel must register with the secretary of state; his employer must enter his own name within 48 hours thereafter. The statements expire December 31 of each year (unless they are filed in December, in which case they are good for the subsequent year.) Both agent (or counsel) and employer must pay a $5 fee at registration. Written termination statements should be filed when the activities end.

Reports

Expenditure disclosure reports are required, separately from agent (or counsel) and employer, on two separate occasions: by January 20 following a year in which the reporting individual was registered, and by March 10 of a year in which the person is registered, covering the prior two month period. The year-end statement requires a categorization of total expenditures by: under $1,000; $1,000—$5,000; $5,000—$10,000; and over $10,000. The two-month statement's categories are: under $250; $250—$500; $500—$1,000; and over $1,000.

Penalties

Violation of the state's lobbying law carries fines of up to $500.

(See: Vermont Statutes Annotated, Sections 251-255.)

VIRGINIA

Amendments to Virginia's lobbying disclosure statute, recommended by a Special Commission on Lobbying and adopted in 1976, have expanded the single reporting period, re-defined the "lobbying" that is subject to disclosure, and introduced an automatic "late-filing penalty" applicable to lobbyists and their employers.

Secretary of the Commonwealth

The secretary of the commonwealth's administrative duties include designing registration and report forms, keeping a public docket of registrants (and giving biweekly, updated lists of registrants to each legislator while the General Assembly is in session), issuing lobbyist identification cards, and furnishing copies of the law to requesting lobbyists and their employers.

The Commonwealth's attorney for the City of Richmond may commence a prosecution against a lobbyist or employer for violating the act (except its late filing provisions), upon a written complaint from any legislator, memorandum from the house or senate rules committees, or resolution of any other legislative committee. At the secretary of the commonwealth's request, the state attorney general is to assist in the prosecution.

For registration and report forms, contact: Secretary of the Commonwealth, Richmond, VA 23219. Phone: (804) 786-2441.

LOBBYING DISCLOSURE

Who must register and report

The amended code provides that registration be required of an individual who (a) is employed or retained for compensation to lobby, and who either receives payment specifically for lobbying or lobbies as part of normal employment-related duties, or (b) has spent or will spend, or has directed or will direct, non-personal lobbying expenditures of above $100.

To be covered by the law, however, lobbyists must be "promoting, advocating or opposing" (through other means than committee appearances or written statements) any matter pending before, under consideration by, or about to be proposed to, the legislature—and must be doing so either (1) between November 15 and the adjournment of any regular legislative session, or (2) between 15 days prior to (or after the calling of, whichever is shorter) and the conclusion of, any special legislative session. The 1976 amendments stipulated that lobbyists so covered must register no matter where their lobbying activities take place—not merely if they occur in Richmond (as was true in previous years).

The newly amended law does not apply to: activities undertaken during times other than those specified above, communications between a lobbyist and the parties on whose behalf he is acting, and contacts with legislators by executives whose duties do not normally include lobbying.

Registration

Registration with the secretary of state is required before a lobbyist begins any lobbying activity in the city of Richmond during the covered periods, and within five days after he first engages in any lobbying entirely outside the capitol city. An identification card is issued after payment of a $20 fee, and is good until the adjournment *sine die* of the session for which it was issued. Registration statements must give the name of the applicant and each of his employers and list any other positions the applicant may hold with each; "a description of the matters and purposes for which" the applicant "expects to be lobbying"; and the identity of the person named as custodian of the accounts and records required to be kept under the law. Supplemental statements indicating any material changes must be filed with the secretary within one week.

A separate part of the law calls upon the head of every executive branch agency or department to identify its official spokesman—whose names are to be kept in the

legislative docket distributed biweekly to legislators—and to "promptly notify" the secretary of any changes. A section in the code specifically prohibits state and local governmental units from retaining outside lobbyists for compensation, but the section does not affect (duly registered) lobbying by full-time employees.

Reports

Every registrant, jointly with each of his employers, must file one report within 60 days of the adjournment *sine die* of the assembly. The report must be signed by both lobbyist and employer, and give: the total of all salaries and retainers paid or incurred by the lobbyist's employer; all expenses paid or incurred by the employer, categorized by communications (telegraph and postage), office expenses, publications and advertising, meals, beverages and entertainment, gifts and contributions, personal living and travel expenses, and other costs; and a list (by bill number or specific subject) of the "matters and purposes" for lobbying. The same salary-retainer and expenditure breakdown must also be given for items received or incurred by the lobbyist himself.

Limitations on gifts and other restrictions

In March of 1975 Virginia substantially broadened its conflict of interest code for state legislators. Under it, a legislator may not solicit or accept anything of value (other than political contributions, tickets to political events or commercially reasonable loans), or any "economic opportunity," that "might reasonably tend to influence him in the discharge of his duties." Members also may not undertake other than commercially normal business transactions, disclose or use confidential official information for private gain, accept outside employment if thought to be offered with the intent to obtain improper influence, or use "improper means" to influence a state agency.

The lobbying law prohibits compensation arrangements contingent upon final outcome of a legislative matter.

Personal financial disclosure

The governor, lieutenant governor, attorney general and members of the general assembly are required to file a statement of economic interests each December. Candidates must file a statement upon qualifying for office. The statement must disclose all economic interests (except bank and savings and loan accounts) valued at more than $5,000, all other offices, directorships or positions of compensated employment and all entities to whom services is rendered.

Spouses and relatives who reside in the same household are also covered by the disclosure requirements.

Penalties

An innovative penalty system adopted in the 1976 amendments provides for an automatic civil penalty of $50 for each day that a lobbyist-employer report is overdue; the penalty applies separately to the lobbyist and his employer. Furthermore, as long as the report remains unfiled and the fine unpaid, the lobbyist shall not be permitted to register. Failure to comply with the law in any other matter is a misdemeanor.

(See: Code of Virginia Chapter 2.1, as amended by 1976 Acts of Assembly.)

WASHINGTON STATE

The Open Government Act, approved by Washington State voters as Initiative 276 in 1972, provides for an independent Public Disclosure Commission to effect its provisions on campaign finance, officeholder financial disclosure, public records and lobbying. In *Fritz* v. *Gorton*, (No. 42870, 1974) the Washington Supreme Court upheld the constitutionality of the act's lobbyist disclosure requirements, which are among the nation's most stringent.

Last June, two companies and a legislator facing court action agreed to pay Washington state the precedent-setting sum of $165,000 for having violated the state's lobbying-disclosure code (*State of Washington* v. *Seattle First National Bank et al.*, King County No. 804180). Other state administrators of lobbying laws heralded the settlement as "one more step toward legitimizing these disclosure laws," removing as it did the psychological barrier to imposing extremely high penalties for infringement of the public "right to clean and open government."

Washington State Public Disclosure Commission

The governor appoints the five members of the commission, with senate confirmation. No more than three commissioners can be of the same political party and all must possess the "highest integrity and qualifications." During their terms members cannot hold or seek elective or political office, lobby or employ or assist a

lobbyist, and are limited to one term on the commission. They can be removed for "neglect of duty or misconduct in office."

Commission duties include preparing forms necessary for the act's disclosure requirements: maintaining a current file of all disclosure statements; investigating whether filers have submitted complete reports; referring apparent violations to appropriate law enforcement agencies, and preparing an annual report to the governor concerning the effectiveness of the act.

Further, the commission is empowered to issue subpoenas; prepare and publish technical studies; conduct field audits and investigations, and promulgate regulations supplementary to the act.

The attorney general and local prosecuting attorneys are responsible for prosecuting violators of the act. In addition, any citizen may register a complaint.

Any person can press charges if the attorney general fails to take action within 40 days of when he is notified of an apparent violation, and if he fails to bring an action within 10 days of being advised of his failure to act. In these cases, the individual bringing the "citizens action" complaint will be entitled to one-half of the fine levied against the violator in the event he is convicted. If lawyer's fees exceed the amount awarded the complainant, then he will be further reimbursed by the State of Washington.

If a citizen brings a complaint and no further probable cause is determined he may be fined in order to pay the defendant's expenses.

For registration and report forms, and a copy of the commission's regulations interpreting the act, contact: Washington State Public Disclosure Commission, 403 Evergreen Plaza, Olympia, WA 98504. Phone: (206) 753-1111.

LOBBYING DISCLOSURE

Who must register and report

The law distinguishes between "direct" and "indirect," or "grass-roots," lobbyists, spelling out distinct registration and reporting requirements for each.

"Lobbying" is defined as action by a "lobbyist" (who may be acting on his own or another's behalf) to affect action on "legislation" (any matter which "may be the subject of" action by the legislature), or action by a state agency on a rule, standard, rate or other so-called "legislative enactment" by an arm of the executive branch.

Persons who engage in direct lobbying of legislature or administrative officials must register, unless they: (1) lobby without compensation or other consideration and incur no expenditures for benefits conveyed to state official; (2) limit their lobbying to public appearances at legislative or administrative committee hearings; (3) are news-media personnel engaged in normal reporting and editorial activities, or (4) restrict their lobbying activities to less than four whole or partial days, and spend less than $15, during any three month period. The governor, lieutenant governor, legislators and elected or appointed state officials, are exempt from the normal requirements for direct lobbyists—but the latter two must file quarterly reports detailing their lobbying expenditures (see reports).

A second disclosure obligation affects so-called "sponsors of a grass roots lobbying campaign," defined as those who make (otherwise unreported) lobbying expenditures totaling more than $500 in any three month period, "in presenting a program addressed to the public, a substantial portion of which is intended, designed or calculated primarily to influence legislation."

Registration

A. *Direct lobbyists.*—Before doing any lobbying, or within 30 days of gaining lobbying employment (whichever comes first), a direct lobbyist must register with the commission. Separate registration—and authorizations—are called for from each payor of compensation (unless the lobbyist represents them collectively and on the same issues, in which case one form will suffice.) The statements must be renewed each January; failure to do so is treated as automatic termination. The registration must fully identify the filer and his employer; give the duration of lobbying employment and indicate whether the registrant performs other duties as well; estimate compensation for the year; state what kinds of expenses will be reimbursed and what kinds paid directly by the employer; fully describe any compensation arrangement conditioned upon the success of a lobbying effort; name the custodian of all lobbying records and indicate general legislative areas of interest. If the lobbyist represents (or if his employer himself represents) any type of membership organization, then the registration must additionally name any of its members, or other persons represented, "whose fees, dues, payments or other consideration paid to such entity during any of the prior two years," or pay agreements for the current year, exceed $500. A recent photograph must accompany the registration.

B. *Grass-roots lobbyists.*—Within 30 days of meeting the "grass-roots" threshold as defined above, sponsors of such programs must also register. Their forms must "identify the controlling persons responsible for managing the sponsor's affairs," as well as anyone hired to manage or work on any particular grass-roots effort (and their terms of compensation); name each contributor to the program(s) and the amounts they gave; detail the purpose of each ongoing effort; and give the totals of expenditures incurred to date (categorized by advertising, contributions, entertainment, office expenses, consultants, printing and mailing, and other costs).

Reports

Different sets of reporting requirements apply to: (a) direct lobbyists (monthly); (b) sponsors of grass-roots lobbying campaigns (while their programs are in effect); (c) employers of registered lobbyists (yearly); (d) every legislator and legislative committee (quarterly); (e) state agencies that lobby or employ legislative liaison personnel (quarterly), and (f) employers of legislators or state employees (following their employment).

A. *Direct lobbyist reports.*—Reports are due within 15 days after the end of each calendar month, whether or not the lobbyist has incurred any expenditures. They should give total expenditures for the covered month, broken down by employer and categorized by compensation, personal expenses, office expenses, and entertainment of others (including travel and food and lodging). Expenditures for entertainment exceeding $25 per occasion must be further identified by recipient, amount and sponsoring employer, and any contributions of money or property (including federal, state and local campaign and ballot issue contributions) must be similarly detailed. The subjects lobbied upon, and the legislative or administrative units lobbied, must also be given.

B. *Grass-roots program reports.*—Registered sponsors of grass-roots lobbying campaigns must file monthly reports of receipts and expenditures until the campaigns end.

C. *Employer reports.*—Employers of registered lobbyists shall have their reports in by March 31, covering the previous calendar year. The statement must give aggregate compensation for each lobbyist as well as any other lobbying expenses attributable to the employer himself, and political contributions, (by candidate or ballot issue, and amount), and name public officials or successful candidates (and their family members) who receive more than $500 during the previous year for "personal employment or professional services," or who own more than 10 percent of a business entity and received such compensation, or who benefited from any expenditures, directly or indirectly, make by the employer.

D. *Legislator/Legislative Committee reports.*—Every legislator and legislative committee—or the chief clerk of the house and secretary of the senate, acting on their collective behalf—must file quarterly statements by the 10th of April, July, October, and January, to cover the preceeding calendar quarter, *if* during that quarter employees were hired and compensated (either by the legislature, or an individual legislator, committee or other source) "for the purpose of aiding in preparation or enactment of legislation or in the performance of legislative duties."

E. *State agency reports.*—Quarterly statements must come from any agency which either expends state funds for lobbying, or "whose officers or employees communicate with members of the legislature on request of any member, or communicate to the legislature requests for legislation or appropriations." Each such employee must be identified along with his job title, annual salary, the percentage of his time spent on lobbying during the quarter, and a general description of his legislative activities.

F. *Statements by employers of legislators, State officers or employees.*— When any registered lobbyist or lobbyist-employer hires or retains a legislator or state official-employee, a statement detailing the nature of the employment is necessary within 15 days of the arrangement date. The purpose of the private employment, description of the public employee's official duties, and the amount to be paid, must be given.

Preservation of records

All records necessary to substantiate the contents of any report must be kept by the lobbyist (or his duly identified custodian) for at least six years from the filing of the report.

Limitations on gifts and other restrictions

A list of "lobbyist duties" enumerated in the act specify that they shall not: knowingly deceive or attempt to deceive any legislator regarding the facts of a pending or proposed matter; work for the introduction of a measure in order to gain employment to oppose it; knowingly represent an interest adverse to that of a

separate employer without the first's written and informed consent; or "exercise any undue influence, extortion, or unlawful retaliation upon any legislator" because of his official actions.

Personal financial disclosure

Elected officials (except for President, Vice President and precinct committeeman) must file an annual statement with the commission on January 31 explaining their personal financial holdings. Candidates for public office must file a similar statement with the commission within two weeks after publicly announcing candidacy.

Personal financial disclosure statements must include the official's occupation; name of employer; business address; each "direct financial" interest in a savings account or insurance policy worth over $500; the names of creditors owed more than $500; every public or private office or directorship held; income from all firms or government agencies or other sources of more than $2,500 in the previous year; any partnerships, corporations, joint ventures, etc., of which the official or candidate is an owner of more than 10 percent interest, and any real property bought, sold or owned worth more than $2,500.

In 1976 the state legislature modified the provisions of the act for candidates who are officers or directors of financial institutions. Instead of reporting the names of bank customers, the candidate may report the name, address and occupation of all other officers and/or directors of the bank he serves, together with the average monthly balance of accounts held in the bank by the government agency to which he is seeking election or holding office.

Amounts required to be reported can be expressed in the following categories: less than $1,000, at least $1,000, but less than $5,000, at least $5,000 but less than $10,000, etc. Stock holdings may be reported by the number of shares rather than market value.

Penalties

The law contains civil remedies and sanctions covering all of its provisions. Late filing penalties of $10 per day may be assessed; in addition, violations of the chapter can carry penalties of up to $10,000 for each separate offense. And any person failing to report a contribution or expenditure may be additionally subject to civil penalty equal to the amount not reported.

(See: Revised Code of Washington, Chapter 42.17.)

WEST VIRGINIA

In February of 1977 the West Virginia House passed a rule on lobbying regulation similar to its three year-old Senate counterpart. No statutory controls on lobbying exist, although proposals to strengthen the present rules and incorporate them into law are in committee.

Clerk of the House; Clerk of the Senate; House and Senate Rules Committees

Lobbyists must file their registration and reporting statements with the clerk of whichever body they intend to lobby; both if necessary. The respective rules committee of each chamber is to be the final arbiter of whether a person fits the rules' definition of "lobbyist," and shall prescribe the forms and procedures for compliance.

For registration and report forms, contact: Clerk of the House (or Senate), State Capitol, Charleston, WV 25305. Phone: (304) 348-2239 (2272).

LOBBYING DISCLOSURE

Who must register and report

"Lobbyists" subject to registration are those who either: (1) are paid compensation; (2) work "on a regular basis," and/or (3) represent "on a regular basis, an organization which has as one of its purposes," the "encouragement, passage, defeat, or modification" of legislation.

Exempted from coverage, however, are West Virginia-organized political parties representing more than 2 percent of the total vote for governor in the last preceding election and their employees; and news-media personnel engaged solely in the reporting and dissemination of news and editorials.

Registration

Registration is due on or before the day on which lobbying begins. The statement must fully identify the registrant and each of his principals, give a "detailed description" of any agreement or understanding concerning contingent fees, and list the general subjects of legislation—by bill-number, position taken, and principals involved, if possible. A recent photograph of the lobbyist is also required. Any material changes or additions must be indicated within ten days.

Reports

One report is required from each registrant within 30 days of the close of each regular and special legislative session, covering his activities during that session. Only one figure is asked for: the total amount of expenditures (other than for personal travel and subsistence) made or incurred, on behalf of each principal, in "the performance of . . . services involving legislative activity."

Limitations on gifts and other restrictions

The lobbying law prohibits lobbyists and their principals from allowing a legislator to charge any costs to a subsidized charge account, paying for a legislator's membership or contribution to a club or organization, or offering any "economic or investment opportunity or promise of employment" to any legislator with intent to influence his official conduct. The senate rule additionally provides that no lobbying may occur on the senate floor when the chamber is in session, and that no senate employee may accept outside lobbying work.

Penalties

None.

(See: House, Senate Rules on Lobbying.)

WISCONSIN

Bills approved by a house committee and awaiting action by a senate panel, would make numerous changes in Wisconsin's current lobbying statute. These include moving administrative responsibility from the secretary of state to the state ethics board, compelling registration of persons who spend threshold lobbying amounts without hiring outside lobbyists, and requiring reporting of allowable entertainment expenses. A 1975 lobbyist-initiated challenge to the secretary of state's rulemaking authority in the lobbying area was partially successful at the circuit court level, and is now on appeal to the Wisconsin Supreme Court (*Hough* v. *La Follette,* Dane County Circuit Court 146–279; Supreme Court Docket No. 76–550).

Secretary of State

The administrative duties of Wisconsin's secretary of state include issuing interpretive rulings, prescribing registration and reporting forms and issuing lobbyist license, making weekly in-session reports to the legislature of newly registered lobbyists and their principals (and forwarding one copy of each periodic report to each legislative body).

To obtain registration and report forms, and a set of administrative rules pertinent to lobbying, contact: Office of the Secretary of State, State Capitol, Madison, WI 53702. Phone: (608) 266–5503.

The district attorney of Dane County, upon receiving and verifying a written complaint, may bring a civil action to revoke the license of a lobbyist. The defendant may ask for a jury trial instead of a court hearing. The law specifies that the hearing shall take place "as soon as possible," but not less than 20 days after charges were brought, and "shall take precedence over all other matters pending before the court." Legal costs are paid by the county if the license is revoked; if the complaint is determined to have been made without proper cause, then the complainant may be assessed the charges.

LOBBYING DISCLOSURE

Who must register and report

Registration is compelled of individuals who directly "promote or oppose the introduction or enactment of legislation" for hire (or as part of employment-related duties), during (a) any regular or special legislative session, or (b) between a general election and the commencement of a regular session.

The definition thus excludes grass-roots, or "indirect," lobbying, as well as direct lobbying that occurs on a voluntary basis or at times other than those specified. Also specifically exempted from coverage are: duly recorded appearances before legislative committees while the legislature is in session, newspaper publications, public addresses to non-legislators, and arguments made in written statements that are delivered to every legislator (and filed in triplicate with the secretary of state within five days thereafter).

Registration

U. S. citizens of good moral character are eligible for lobbyist licenses. Within one week of employing a lobbyist, the employer must enter the lobbyist's name in the lobbyist register kept by the secretary; the lobbyist himself must confirm the entry, and file an additional employer authorization within ten days. Either party may terminate the registration after lobbying ceases. Each approved license application

(and accompanying $10 licensing fee) entitles the lobbyist to practice on behalf of one principal; the process must be repeated in full for each additional employer. All licenses expire December 31 of each year. The lobbyist's license application must fully identify registrant and principal, state the nature of the principal's business and expected duration of the lobbyist's employment, give the amount of compensation, maximum amount of reimbursable expenditures (and the types that will be reimbursed), state any other occupation of the lobbyist other than lobbying, name any business associates and immediate family members of the registrant who are either legislators or employed by the state or by the principal, and identify, by code, the registrant's general subjects of legislative interest (as well as a formal designation of bills, and the position to be taken). Whenever such subjects change, the principal must make additional entries in the statement to reflect the fact.

Reports

A. *Monthly Lobbyist Reports.*—Periodic reports of expenditures by registered lobbyists are due within ten days from the end of each calendar month during which the legislative met in regular or special session. The reports must give the lobbyist's lobbying-related receipts, first in total, and then (broken down by principal) in categories of compensation, gifts, dues and assessments, reimbursements and other receipts, and itemized all loans received or repaid by the registrant that were lobbying-connected (by creditor and amount). All lobbying-related expenditures made by the lobbyist, either personally or by the principal on his behalf, must be itemized and categorized by office expenses, printed materials, telephone-telegraph, postage, travel-food-entertainment (if reimbursable), accommodations, all forms of compensation, public relations and advertising, and other expenses, and cumulative totals given. Any expenditures individually over $50 must be separately listed by date, recipient, purpose, and amount.

Lobbyists who spend no money, and earn no compensation, may file one statement to that effect, after which no expenditure statements are required for the session's duration unless reimbursement or compensation occurs.

B. *Annual reports by principals.*—Every principal must submit a separate "statement of expenses" within 30 days of the legislature's *sine die* adjournment, identifying each lobbyist by duration of employment, amount of compensation, and the amount of expense-reimbursement (categorized the same way the lobbyist must categorize his receipts).

Limitations on gifts and other restrictions

NOTE.—Under a special category of Wisconsin's lobbying law labelled "unprofessional conduct," the state prohibits attempts to influence legislators by "any other means than a full and fair argument on the merits . . ." of an issue, including furnishing (or being involved in the furnishing) to any state official or candidate of any "food, meal, lodging, beverage, transportation, money, campaign contribution or any other thing of pecuniary value." The prohibition however, expressly exempts "entertainment by a non-profit organization at a bona fide social function or meeting . . ."

Also in the law's list of prohibited activities are: soliciting employment from a principal, or instigating the introduction of legislation for purposes of gaining employment to oppose it; arranging compensation contingent upon legislative action, or lobbying on a measure without revealing one's "real and true interest" in it (both of which carry special fines of up to $200 or one year in jail); and going upon the floor of the legislature to lobby without invitation. If any employee or owner of a newspaper or other periodical accepts payment for an article or editorial commenting on pending legislation, the periodical's owner or publisher must file a statement to that effect (and identify the benefactor) with the secretary of state, within 10 days thereafter. Failure to do so is a misdemeanor carrying fines of $500–$5,000.

Personal financial disclosure

1973 legislation provides a "Code of Ethics for State Public Officials." This requires most state officials to submit annual statements of personal financial holdings. In the case of a candidate, statements are due within 21 days of the time the candidate announces his candidacy. Yearly reports from officials are required by April 30. An official cannot be administered the oath of office unless he has filed this statement.

Disclosure statements filed with the state ethics board must include every "significant fiduciary relationship" (10 percent of ownership or $5,000 in holdings) that the official or his immediate family possesses; any directorships held by the official or members of his family; the identity and value of bonds, debentures, debt obliga-

tions or holdings in a municipal corporation valued in excess of $5,000, and the name of any creditor to whom more than $3,000 is owed.

Among other provisions, the ethics code prohibits officials and members of the legislature from using their positions for personal gain or divulging confidential information gained through public service.

Penalties

In addition to potential revocation of one's license—in which case one may not lobby until he is duly reinstated—any lobbyist who violates the disclosure provisions of the law may be fined $100–$1,000, and "disbarred" from lobbying for three years from the conviction date. Separate penalties are provided for failure to file reports (maximum $500 fine and/or six months' imprisonment); false disclosures ($500–$1,000 fine, or 30 days to one year in jail); or for failure to register as required or deliver copies of written materials to the secretary of state (maximum $200 fine, or up to six months in jail).

Principals in violation of the act's registration and reporting obligations risk fines between $200–$5,000.

(See: Wisconsin Statutes, Subchapter III: Regulation of Lobbying; and Wisconsin Administrative Code, Chapter SS 2 (Administrative Rules issued by the Secretary of State).)

WYOMING

Attempts to add periodic reporting requirements to Wyoming's 1971 registration-only lobbying law have all been defeated.

Director of the Legislative Service Agency

Responsibility for collecting registrations and for sending weekly, updated lists of such registrations to each legislator during legislative sessions, is vested in the director of the state's Legislative Service Agency.

For registration forms, contact: Director, Legislative Service Agency, 213 Capitol Building, Cheyenne, WY 82002.

LOBBYING DISCLOSURE

Who must register and report

Under current lobbying law, any person who, during a regular or special legislative session, make "any representation" to individual legislators or before legislative committees, on behalf of "any interest other than personal," and receives either compensation or expense-reimbursement for doing so, must register.

The only exception stated in the law is for public officials acting in an official capacity.

Registration

Such persons must register and pay a $2 fee, good for one regular or special legislative session. The fee also pays for a "registered lobbyist" pin, which must be worn whenever lobbying takes place, and which gains the registrant access to a special area within the state capitol reserved for lobbying. The registration form asks only for the name and address of the lobbyist and his employer.

Reports

None required.

Penalties

Failure to file the required information with the legislative service agency is a misdemeanor punishable by a maximum $200 fine.

(See: Wyoming Statutes, Chapter 8.3, Sections 28–70.25—28–70.28.)

[The following bills, which are similar to the bill H.R. 81, set out on pages 2 through 23 of these hearings, were also before the subcommittee and were referred to in the course of the hearings.]

96TH CONGRESS
1ST SESSION

H. R. 128

To provide for disclosures by lobbyists, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. BENNETT introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide for disclosures by lobbyists, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Lobbying Disclosure Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds—

(1) that the preservation of responsible democratic government requires that the fullest opportunity be afforded to the people of the United States to petition their Government for a redress of grievances and to

express freely to individual Members of Congress and to committees of the Congress their opinion on legislation and on current issues;

(2) that, to achieve legislative results affecting the true will of the majority, facts and opinions expressed to Congress by the advocates of one result must be balanced against the facts and opinions of those who may have opposing interests, and all such facts and opinions must be available to the Congress and all other Federal authority participating in the legislative process; and

(3) that the identity and activities of persons or groups who engage in efforts to persuade Congress to arrive at specific legislative results, either by direct communication to Congress or by solicitation of others to engage in such efforts, should be publicly and timely disclosed if there is to be a balance of expression upon which decisions by the Congress may be based.

(b) It is, therefore, the purpose of this Act to provide for the disclosure to the Congress, to the President, and to the public of the activities, and the origin, amounts, and utilization of funds and other resources, of and by persons who seek to influence the legislative process.

DEFINITIONS

SEC. 3. When used in this Act, unless the context otherwise indicates, the term—

(a) "Person" includes an individual, partnership, committee, association, corporation, trust, and any other organization or group of persons.

(b) "Legislation" means any bill, resolution, amendment, nomination or other matter in Congress or, as a matter of public knowledge, proposed to be presented or introduced in Congress.

(c) "Congress" means the Congress of the United States, or either House thereof.

(d) "Income" includes a gift, subscription, donation, or a transfer of funds, services, or anything of value (which includes but is not limited to statistics, data compilations, and studies); or a promise, contract, or agreement, whether or not legally enforceable, to make a contribution.

(e) "Expenditure" includes a purchase, payment, distribution, loan, advance, deposit, or a transfer of funds, service, gift of money or anything of value (which includes but is not limited to statistics, data compilations, and studies); or a promise, contract, or agreement, whether or not legally enforceable, to make an expenditure; and include expenditures by a person to further the activities of any person required to file a statement, when such expenditures are made with con-

sent and knowledge of any such person, who is required to file a statement under this Act, if not separately reported by him.

(f) "Direct communication" includes all means of direct address to Congress, any Member, committee, joint committee, subcommittee, officer, or employee thereof; or the solicitation of an agency, department, or instrumentality of any branch of the Federal Government to make direct address to Congress, any Member, committee, joint committee, subcommittee, officer, or employee thereof.

(g) "Solicitation" means the asking, requesting, or urging of a person to himself engage in direct communication; or the asking, requesting, or urging that another person ask, request, or urge another to engage in direct communication.

(h) "Legislative agent" includes any person who, for any consideration, is employed or retained or engages himself to influence legislation, in person or through any other person, by means of direct communication.

(i) "Influence legislation" means any effort by any person to effect, delay, or prevent the introduction, consideration, passage, defeat, or amendment of legislation by Congress, any Member, committee, joint committee, or subcommittee thereof, through direct communication.

(j) "Statement" includes a notice of representation or a report required by this Act.

(k) "Member" includes a Senator, a Representative in Congress, a Delegate to Congress, and the Resident Commissioner from Puerto Rico.

(l) "Consideration" means any payment of money or anything of value.

PERSONS SUBJECT TO THIS ACT

SEC. 4. This Act shall apply to—

(1) any person who is a legislative agent;

(2) any person who employs or retains one or more legislative agents;

(3) any officer or employee of a person, if such officer or employee attempts to influence legislation for or on behalf of such person;

(4) any person who effects the solicitation, orally or in writing of other persons or groups of persons to influence legislation, if such solicitation is made to any person who is paid, or is promised the payment of, any consideration for his efforts to influence legislation by the person who has effected the solicitation.

EXEMPTIONS

SEC. 5. This Act shall not apply to the following activities:

(1) the publication or dissemination, in the ordinary course of business, of news items, advertising, editorials, or other comments by a newspaper, book

publisher, regularly published periodical, radio or television station (including an owner, editor, or employee thereof) except that this exemption shall not extend to house organs and other similar publications that are not distributed to the general public, notwithstanding qualification as a "newspaper" under the postal statutes, if—

(A) at least 50 per centum of any such house organ or similar publication is owned or controlled by a person otherwise required to file any statement under this Act, or

(B) the content of such organ or publication is controlled in whole or in part by such a person;

(2) acts of a public official (elected or appointed) in his official capacity;

(3) practices or activities subject to any Federal statute requiring reports covering contributions and expenditures in connection with campaigns for Federal elective office;

(4) any appearance by any person before any public session of a committee of the Congress if—

(A) such person is summoned or specifically requested to appear by the committee and such request is incorporated into the records of the committee, or

(B) such person, appearing on his own initiative, certifies to the committee that his appearance to the best of his knowledge is not the consequence of an action by any person required to file any statement under this Act, or

(C) such person, appearing on his own initiative, but his appearance is the consequence of an act by another person who to the best knowledge of the person appearing is required to file any statement under this Act, and the person appearing before the committee certifies to the committee the name of such other person, and such name is incorporated into the records of the committee.

OBLIGATIONS TO FILE

SEC. 6. (a) Every employee, officer, or person performing the functions of an officer, of any person required by this Act to file any statement or notice of termination shall be under obligation to cause such person to file such statement or notice of termination within the time prescribed by this Act.

(b) The obligation of any person to file any statement or notice of termination required by this Act shall continue from day to day, and discontinuance of the activity out of which the obligation arises shall not relieve any such person from

the obligation to file any statement or notice of termination required by this Act.

(c) The filing of any statement or notice of termination required by this Act shall not be considered with respect to tests of substantiality of political activity under any other provision of law.

FILING OF NOTICE OF REPRESENTATION

SEC. 7. (a) Every person who, on or after the effective date of this Act, is employed or retained or engages himself as a legislative agent shall, prior to any direct communication to influence legislation or under extenuating circumstances with good cause shown within three days after the first such communication, file a signed notice of representation with the Comptroller General. Such signed notice of representation shall be in such form and detail as the Comptroller General may prescribe, and must include an identification of such person, the person by whom he is employed or retained (if any), and any such person's specific area of legislative interest, and the person in whose interest he is working and the terms of such representation. If his status changes with respect to any of the information which the Comptroller General requires under this section, he shall immediately inform the Comptroller General in writing of any such changes.

(b) Any person required to register pursuant to this Act in connection with any activities for which he is to receive a

contingent fee shall, before doing anything for which such fee is to be paid, file with the Comptroller General, in such detail as the Comptroller General may require, a description of the event upon the occurrence of which the fee is contingent, and, depending on the arrangement, a statement of the amount of the fee either in terms of a dollar amount or in terms of percentage of recovery. A copy of any such contingent fee contract may be filed with the Comptroller General by any registrant, and shall be so filed at the request of the Comptroller General.

RECORDKEEPING

SEC. 8. Any person who is subject to this Act shall—

(1) keep a detailed record of income received to influence legislation, which shall include the name and address of, and amount received from, any person from whom at least $25 has been received for such purpose during the calendar half-year; and in the case of any voluntary membership association or other person who regularly receives sums per time period (such as dues or subscriptions), the fraction of such sums as relates to the ratio of total sums expended by such association or other person to influence legislation to the total expenditures of such association or other person, shall be applied to receipts from members of such association or

other person in determining amount received under this section;

(2) keep a detailed record of any expenditure to influence legislation, including a receipted bill or canceled check, if such expenditure is at least $25, except that the Comptroller General may require estimates of unrecorded expenditures for the purpose of influencing legislation, in such form and detail as he may prescribe, by persons who have not solicited, collected, or received any income required to be reported under section 8(1) of this Act; and

(3) preserve the records required to be kept by this section for a period of two years from the date that any information obtained from such records is filed with the Comptroller General pursuant to section 9.

FILING OF REPORTS

SEC. 9. Any person who falls within the class of persons enumerated in section 4 and not exempted under section 5 shall file a signed report with the Comptroller General. Such report shall be in such detail as the Comptroller General may prescribe, and must include an identification of such person, the person by whom he is employed or retained (if any), the person in whose interest he is working and the terms of such representation, and the information contained in the records required to be maintained under paragraphs (1) and (2) of

section 8. Such report shall be filed with the Comptroller General between the 1st and 15th days of July, which will cover the preceding six-month period from the 1st day of January to the 30th day of June, and it shall be filed between the 1st and 15th days of January, which will cover the preceding six-month period from the 1st day of July to the 31st day of December. The Comptroller General may, in his discretion, permit joint reports by persons subject to this Act.

NOTICE OF TERMINATION

SEC. 10. Every legislative agent shall submit to the Comptroller General a notice of termination within thirty days after he ceases to be a legislative agent, on such form as the Comptroller General shall prescribe; and any person who has employed, retained, or engaged any legislative agent may submit a notice of termination to the Comptroller General, on such form as the Comptroller General shall prescribe, within thirty days after such legislative agent has ceased to represent him.

ADMINISTRATION OF THIS ACT

SEC. 11. Administration of this Act is hereby vested in the Comptroller General of the United States. He is authorized to promulgate such rules and regulations as are consistent with and necessary to carry out the provisions of this Act. Such rules and regulations shall be published in the Federal Register and interested persons shall be given an oppor-

tunity to submit comments thereon for a period of thirty days commencing with the date of such publication. He shall forward such comments with the text of the proposed rules and regulations within sixty days after the termination of the thirty-day period to the Committee on Standards of Official Conduct of the United States House of Representatives and to the Select Committee on Standards and Conduct of the United States Senate. Unless either of the above Committees, by a majority vote of its full membership, disapproves of such rules or regulations within thirty legislative days of receipt, the rules or regulations shall take effect.

FILING OF STATEMENT

SEC. 12. The Comptroller General shall in a manner compatible with any United States Government-wide standard classification index in existence or in the process of development at the effective date of this Act—

(1) develop and prescribe methods and forms for statements and notices of termination required to be filed by this Act and require the use of such forms by persons subject to the Act;

(2) compile and summarize, in a manner reflective of the full disclosure intent of this Act, information contained in statements and notices of termination filed pursuant to this Act and report the same to Congress after each reporting period;

(3) make available for public inspection all statements and notices of termination filed pursuant to this Act and all summaries compiled under paragraph (2);

(4) have any notices of representation and notices of termination received by him published in the Congressional Record within three days of such receipt, or if Congress is not in session when such notice is received then as soon as possible after Congress reconvenes; and

(5) ascertain whether any persons, other than legislative agents, have failed to file statements or notices of termination as required by this Act, or have filed incomplete or inaccurate statements or notices of termination, and give notice to such persons to file such statements as will conform with the requirements of this Act.

(6) maintain all records and statements required to be filed for a period of five years from the date of filing.

RETENTION OF COPIES IN LIEU OF ORIGINAL COPIES

SEC. 13. The Comptroller General is hereby authorized to retain, in lieu of statements filed hereunder, reproductions thereof made by microphotographic process. The retention of such microphotographic reproductions constitutes compliance with the statutory requirements for retention, and such repro-

duction shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

SANCTIONS

SEC. 14. (a) Upon the failure to comply with any provisions of this Act by any person subject thereto, other than a legislative agent, the Attorney General may, upon the request of the Comptroller General, institute a civil action for a mandatory injunction, or other order, requiring such person to perform any duty imposed by this Act.

(b) Any legislative agent required to file a notice of representation or report under this Act, who fails to file such a notice or report, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than $10,000 or imprisonment for not more than twelve months, or both.

(c) Whoever knowingly and willfully falsifies all or any part of any statement filed under this Act shall be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or both.

(d) Whoever shall transmit, utter, or publish to Congress any communication relating to any matter within the jurisdiction of Congress, or be a party to the preparation thereof, knowing such communication or any signature thereto is false, forged, counterfeit, or fictitious, shall be guilty of a felony and shall be punished by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

SEVERABILITY

SEC. 15. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

REPEAL DATE

SEC. 16. The Federal Regulation of Lobbying Act (60 Stat. 839–842, 2 U.S.C. 261 et seq.) is repealed.

EFFECTIVE DATE

SEC. 17. The provisions of this Act shall take effect on its date of enactment, except that any person required to maintain records by section 4 shall not have any duties or obligations under this Act until the date on which the regulations to carry out this Act first become effective.

96TH CONGRESS
1ST SESSION

H. R. 1979

To regulate lobbying and related activities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979

Mr. RAILSBACK (for himself and Mr. KASTENMEIER) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To regulate lobbying and related activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Disclosure of Lobbying Act of 1979".

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "affiliate" means—

(A) an organization which is associated with another organization through a formal relationship based upon ownership or an agreement (including

a charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

(B) a unit of a particular denomination of a church or of a convention or association of churches; and

(C) a national membership organization and any of its State or local membership organizations or units, a national trade association and any of its State or local trade associations, a national business league and any of its State or local business leagues, a national federation of labor organizations and any of its State or local federations, and a national labor organization and any of its State or local labor organizations;

(2) the term "Comptroller General" means the Comptroller General of the United States;

(3) the term "direct business relationship" means the relationship between an organization and any Federal officer or employee in which—

(A) such Federal officer or employee is a partner in such organization;

(B) such Federal officer or employee is a member of the board of directors or similar governing body of such organization, or is an officer or employee of such organization; or

(C) such organization and such Federal officer or employee each hold a legal or beneficial interest (excluding stock holdings in publicly traded corporations, policies of insurance, and commercially reasonable leases made in the ordinary course of business) in the same business or joint venture, and the value of each such interest exceeds $1,000;

(4) the term "employ" means the utilization of the services of an individual or organization in consideration of the payment of money or other thing of value, but does not include the utilization of the services of a volunteer;

(5) the term "exempt travel expenses" means any sum expended by any organization in payment or reimbursement of the cost of any transportation for any agent, employee, or other person (but not including a Federal officer or employee) engaging in activities described in section 3(a), plus such amount of any sum received by such agent, employee, or other person as a per diem allowance for each such day as is not in

excess of the maximum applicable allowance payable under section 5702(a) of title 5, United States Code, to Federal employees subject to such section;

(6) the term "expenditure" means—

(A) a payment, distribution (other than normal dividends and interest), salary, loan (if made on terms or conditions that are more favorable than those available to the general public), advance, deposit, or gift of money or other thing of value, other than exempt travel expenses, made—

(i) to or for the benefit of a Federal officer or employee;

(ii) for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a), and for costs attributable partly to activities described in section 3(a) where such costs, with reasonable preciseness and ease, may be directly allocated to those activities; or

(iii) for the retention or employment of an individual or organization who makes lobbying communications on behalf of the organization; or

(B) a contract, promise, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparagraph (A);

(7) the term "Federal officer or employee" means—

(A) any Member of the Senate or the House of Representatives, any Delegate to the House of Representatives, and the Resident Commissioner in the House of Representatives;

(B) any officer or employee of the Senate or the House of Representatives or any employee of any Member, committee, or officer of the Congress;

(C) any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code; and

(D) the Comptroller General, Deputy Comptroller General, General Counsel of the United States General Accounting Office, and any officer or employee of the United States General Accounting Office whose compensation is fixed by the Comptroller General in accordance with section 203(i) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 52b);

(8) the term "identification" means—

(A) in the case of an individual, the name, occupation, and business address of the individual and the position held in such business; and

(B) in the case of an organization, the name and address of the organization, the principal place of business of the organization, the nature of its business or activities, and the names of the executive officers and the directors of the organization, regardless of whether such officers or directors are paid;

(9) the term "lobbying communication" means, with respect to a Federal officer or employee described in section 2(7) (A) or (B), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, treaty, nomination, hearing, report, or investigation, and, with respect to a Federal officer or employee described in section 2(7) (C) or (D), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, or treaty which has been transmitted to or introduced in either House of Congress or any report thereon of a committee of Congress, any nomination to be submitted or submitted to the Senate, or

any hearing or investigation being conducted by the Congress or any committee or subcommittee thereof, but does not include—

(A) a communication made at the request of a Federal officer or employee, or submitted for inclusion in a report of a hearing or in the record or public file of a hearing;

(B) a communication made through a speech or address, through a newspaper, book, periodical, or magazine published for distribution to the general public, or through a radio or television transmission, or through a regular publication of an organization published in substantial part for purposes unrelated to engaging in activities described in section 3(a): *Provided*, That this exemption shall not apply to an organization responsible for the purchase of a paid advertisement in a newspaper, magazine, book, periodical, or other publication distributed to the general public, or of a paid radio or television advertisement;

(C) a communication by an individual for a redress of grievances, or to express his personal opinion;

(D) a communication on any subject directly affecting an organization to (i) a Senator, or to an

individual on his personal staff, if such organization's principal place of business is located in the State represented by such Senator, or (ii) a Member of the House of Representatives, or to an individual on his personal staff, if such organization's principal place of business is located in a county (including a city, city-and-county, parish, and the State of Alaska) within which all or part of such Member's congressional district is located; or

(E) a communication which deals only with the existence or status of any issue, or which seeks only to determine the subject matter of an issue.

(10) the term "organization" means—

(A) any corporation (excluding a Government corporation), company, foundation, association, labor organization, firm, partnership, society, joint stock company, organization of State or local elected or appointed officials (excluding any Federal, State, or local unit of government other than a State college or university as described in section 511(a)(2)(B) of the Internal Revenue Code of 1954, and excluding any Indian tribe, any national or State political party and any organiza-

tional unit thereof, and any association comprised solely of Members of Congress or Members of Congress and congressional employees), group of organizations, or group of individuals; and

(B) any agent of a foreign principal as defined in section 1 of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611);

(11) the term "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1; and

(12) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

APPLICABILITY OF ACT

SEC. 3. (a) The provisions of this Act shall apply to—

(1) any organization which makes an expenditure in excess of $2,500 in any quarterly filing period for the retention of an individual or another organization to make lobbying communications, or for the express purpose of preparing or drafting any such lobbying communication; or

(2) any organization which (A) employes at least one individual who, on all or any part of each thirteen days or more in any quarterly filing period, or at least

two individuals each of whom on all or any part of each of seven days or more in any quarterly filing period, makes lobbying communications on behalf of that organization, and (B) makes an expenditure in excess of $2,500 in such quarterly filing period on making lobbying communications,

except that the provisions of section 4 and section 6 of this Act shall not apply to an affiliate of a registered organization if such affiliate engages in activities described in paragraphs (1) and (2) of this subsection and such activities are reported by the registered organization.

(b) This Act shall not apply to practices or activities regulated by the Federal Election Campaign Act of 1971.

REGISTRATION

SEC. 4. (a) Each organization shall register with the Comptroller General not later than thirty days after engaging in activities described in section 3(a).

(b) The registration shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization, except that nothing in this paragraph shall be construed to require the disclosure of the identity of the members of an organization.

(2) An identification of any retainee described in section 3(a)(1) and of any employee described in section 3(a)(2).

(c) A registration filed under subsection (a) in any calendar year shall be effective until January 15 of the succeeding calendar year. Each organization required to register under subsection (a) shall file a new registration under such subsection within fifteen days after the expiration of the previous registration, unless such organization notifies the Comptroller General, under subsection (d), with respect to terminating the registration of the organization.

(d) Any registered organization which determines that it will no longer engage in activities described in section 3(a) shall so notify the Comptroller General. Such organization shall submit with such notification either (1) a final report, containing the information specified in section 6(b), concerning any activities described in section 3(a) which the organization has not previously reported or (2) a statement, pursuant to section 6(a)(2), as the case may be. When the Comptroller General receives such notification and report or statement, the registration of such organization shall cease to be effective.

RECORDS

SEC. 5. (a) Each organization required to be registered and each retainee of such organization shall maintain for

each quarterly filing period such records as may be necessary to enable such organization to file the registrations and reports required to be filed under this Act, except that, in those situations where a registered organization elects to report as to the lobbying activities of its affiliates pursuant to section 3(a), such affiliates shall be responsible for maintaining such records as are necessary to enable the registered organization to fully discharge its reporting obligations as they pertain to such affiliates. The Comptroller General may not by rule or regulation require an organization to maintain or establish records (other than those records normally maintained by the organization) for the purpose of enabling him to determine whether such organization is required to register.

(b) Any officer, director, employee, or retainee of any organization shall provide to such organization such information as may be necessary to enable such organization to comply with the recordkeeping and reporting requirements of this Act. Any organization which shall rely in good faith on the information provided by any such officer, director, employee, or retainee shall be deemed to have complied with subsection (a) with respect to that information.

(c) The records required by subsection (a) shall be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate.

REPORTS

SEC. 6. (a)(1) Each organization which engages in the activities described in section 3(a) during a quarterly filing period shall, not later than thirty days after the last day of such period, file a report concerning such activities with the Comptroller General.

(2) Each registered organization which does not engage in the activities described in section 3(a) during a quarterly filing period shall file a statement to that effect with the Comptroller General.

(b) Each report required under subsection (a)(1) shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization filing such report.

(2) The total expenditures (excluding salaries other than those reported under paragraph (5) of this subsection) which such organization made with respect to activities described in section 3(a) during such period.

(3) An itemized listing of each expenditure in excess of $35 made to or for the benefit of any Federal officer or employee and an identification of such officer or employee.

(4) A disclosure of those expenditures for any reception, dinner, or other similar event which is paid for, in whole or in part, by the reporting organization and which is held for the benefit of any Federal officer or employee, regardless of the number of persons invited or in attendance, where the total cost to the reporting organization of the event exceeds $500.

(5) An identification of any retainee of the organization filing such report and of any employee who makes lobbying communications on all or part of each of seven days or more, and the expenditures made pursuant to such retention or employment, except that in reporting expenditures for the retention or employment of such individuals or organizations, the organization filing such report shall—

(A) allocate, in a manner acceptable to the Comptroller General, and disclose the amount which is paid to the individual or organization retained or employed by the reporting organization and which is attributable to engaging in such activities for the organization filing such reports; or

(B) notwithstanding any other provision of this Act, disclose the total expenditures paid to any individual or organization retained or em-

ployed (as described in section 3(a)) by the organization filing such report.

(6) A description of the issues concerning which the organization filing such report engaged in lobbying communications and upon which the organization spent a significant amount of its efforts, disclosing with respect to each issue any retainee or employer identified in paragraph (5) of this subsection and the chief executive officer, whether paid or unpaid, who engaged in lobbying communications on behalf of that organization on that issue. However, in the event an organization has engaged in lobbying communications on more than fifteen issues, it shall be deemed to have complied with this subsection if it lists the fifteen issues on which it has spent the greatest proportion of its efforts. For purposes of this paragraph the term "chief executive officer" means the individual with primary responsibility for directing the organization's overall policies and activities;

(7) In the case of written solicitations, and solicitations made through paid advertisements, where such solicitations reached or could be reasonably expected to reach, in identical or similar form, five hundred or more persons, one hundred or more employees,

twenty-five or more officers or directors, or twelve or more affiliates of such organization—

(a) a description of the issue with which the solicitation was concerned: *Provided*, That the reporting organization may, in its own discretion solely, satisfy this requirement by filing a copy of the solicitation;

(b) a description of the means employed to make the solicitation and an indication of whether the recipients were in turn asked to solicit others;

(c) an identification of any person retained to make the solicitation;

(d) if the solicitation is conducted through the mails or by telegram, the approximate number of persons directly solicited; and

(e) if the solicitation is conducted through a paid advertisement and the total amount expended exceeds $5,000, an identification of the publication, or radio or television station where the solicitation appeared and the total amount expended on any solicitation conducted through one or more such advertisements.

"For purposes of this paragraph, the term "solicitation" means any communication directly urging, requesting, or requiring another person to advocate a

specific position on a particular issue and to seek to influence a Member of Congress with respect to such issue, but does not mean such communication by one organization registered under this Act to another organization registered under this Act.

(8) Disclosure of each known direct business relationship between the reporting organization and a Federal officer or employee whom such organization has sought to influence during the quarterly filing period involved.

(9) If any lobbying communication was made on the floor of the House of Representatives or adjoining rooms thereof, or on the floor of the Senate or adjoining rooms thereof, a statement that such lobbying communication was made.

(c) The report covering the fourth quarter of each calendar year shall also include a separate schedule listing the name and address of each organization from which the reporting organization received an aggregate of $3,000 or more in dues or contributions during that calendar year and listing the amount given, where (i) the dues or contributions were expended in whole or in part by the reporting organization for lobbying communications and solicitations and (ii) the total expenditures reported by the reporting organization under subsections (b)(2) and (b)(7) of this section during that

calendar year exceed 1 per centum of the total annual income of the organization: *Provided*, That the reporting organization may, if it so chooses, instead of listing the specific amount received, state the amount, in the following categories: (A) amounts equal to or exceeding $3,000, but less than $10,000; (B) amounts equal to or exceeding $10,000, but less than $25,000; (C) amounts equal to or exceeding $25,000, but less than $50,000; (D) amounts equal to or exceeding $50,000.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 7. (a) It shall be the duty of the Comptroller General—

(1) to develop filing, coding, and cross-indexing systems to carry out the purposes of this Act, including (A) a cross-indexing system which, for any retainee described in section 3(a)(1) who is identified in any registration or report filed under this Act, discloses each organization identifying such retainee in any such registration or report, and (B) a cross-indexing system, to be developed in cooperation with the Federal Election Commission, which discloses for any such retainee each identification of such retainee in any report filed under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(2) to make copies of each registration and report filed with him under this Act available for public inspection and copying, commencing as soon as practicable after the date on which the registration or report involved is received, but not later than the end of the fifth working day following such date, and to permit copying of such registration or report by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; but no information contained in any such registration or report shall be sold or utilized by any individual or organization for the purpose of soliciting contributions or business;

(3) to preserve the originals or accurate reproductions of such registrations and reports for a period of not less than five years from the date on which the registration or report is received;

(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

(5) to make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to permit copying of such information by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of such information upon payment of the cost of making and furnishing such copy;

(6) to prescribe such rules and regulations and such forms as may be necessary to carry out the provisions of this Act in an effective and efficient manner; and

(7) to refer to the Attorney General all apparent violations of any provisions of this Act, or any rule or regulation promulgated in accordance therewith.

(b) The duties of the Comptroller General described in subsection (a)(6) of this section shall be carried out in conformity with chapter 5 of title 5, United States Code, and any records maintained by the Comptroller General under this Act shall be subject to the provisions of sections 552 and 552a of such chapter.

ENFORCEMENT

SEC. 8. (a) It shall be the duty of the Attorney General to investigate alleged violations of any provision of this Act, or any rule or regulation promulgated in accordance there-

with. The Attorney General shall notify the alleged violator of such alleged violation, unless the Attorney General determines that such notice would interfere with the effective enforcement of this Act, and shall make such investigation of such alleged violation as the Attorney General considers appropriate. Any such investigation shall be conducted expeditiously, and with due regard for the rights and privacy of the individual or organization involved.

(b) If the Attorney General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a civil violation of this Act as described in section 11(a), he shall endeavor to correct such violation by informal methods of conference or conciliation.

(c) If the informal methods described in subsection (b) fail, the Attorney General may institute a civil action, including an action for a permanent or temporary injunction, restraining order, or any other appropriate relief, in the United States district court for the judicial district in which such individual or organization is found, resides, or transacts business.

(d) If the Attorney General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a criminal violation of this Act as

described in section 11(b) or 11(c), the Attorney General may institute criminal proceedings in a United States district court in accordance with the provisions of chapter 211 of title 18, United States Code.

(e) The United States district courts shall have jurisdiction of actions brought under this Act.

(f) In any civil action brought pursuant to subsection (c), the court may award to the prevailing party (other than the United States or an agency or official thereof) reasonable attorney fees and expenses if the court determines that the action was brought without foundation, vexatiously, frivolously, or in bad faith.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 9. The Comptroller General shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out his duties and functions under this Act, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF RULES OR REGULATIONS

SEC. 10. (a) Upon promulgation of any rule or regulation to carry out the provisions of section 4, 5, or 6 under the

dations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF RULES OR REGULATIONS

SEC. 10. (a) Upon promulgation of any rule or regulation to carry out the provisions of section 4, 5, or 6 under the authority given him in section 7(a)(4) of this Act, the Comptroller General shall transmit notice of such rule or regulation to the Congress. The Comptroller General may place such rule or regulation in effect as proposed at any time after the expiration of ninety calendar days of continuous session after the date on which such notice is transmitted to the Congress unless, before the expiration of such ninety days, either House of the Congress adopts a resolution disapproving such rule or regulation.

(b) For purposes of this section—

(1) continuity of session of the Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety calendar days referred to in subsection (a).

SANCTIONS

SEC. 11. (a) Any individual or organization who with specific intent violates section 4, 5, or 6 of this Act shall be fined not more than $5,000 for each such violation not to exceed $100,000.

(b) Any individual or organization selling or utilizing information contained in any registration or report in violation of section 7(a)(1) of this Act shall be subject to a civil penalty of not more than $100,000.

EFFECT ON OTHER LAWS

SEC. 12. An organization shall not be denied an exemption or have an existing exemption revoked under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c) of such Code, and shall not be denied status as an organization described in sections 170(c)(2), 2055(a)(2), 2106(a)(2), and 2522 of such Code, solely on the basis of information disclosed under this Act.

REPEAL OF THE FEDERAL REGULATION OF LOBBYING ACT

SEC. 13. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof, are repealed.

SEPARABILITY

SEC. 14. If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this

Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. There are authorized to be appropriated to carry out this Act $1,600,000 for the fiscal year beginning on October 1, 1980; $1,600,000 for the fiscal year beginning on October 1, 1981, and, $1,600,000 for the fiscal year beginning on October 1, 1982.

EFFECTIVE DATES

SEC. 16. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on October 1, 1980.

(b) Sections 3, 4, 5, 6, 8, and 11, shall take effect on the first day of the first calendar quarter beginning after the date on which the first rules and regulations promulgated to carry out the provisions of sections 4, 5, and 6 take effect, in accordance with sections 7 and 10.

96TH CONGRESS
1ST SESSION

H. R. 2497

To regulate lobbying and related activities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1979

Mr. MAZZOLI introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

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(1) the term "affiliate" means—

(A) an organization which is associated with another organization through a formal relationship based upon ownership or an agreement (including

a charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

(B) a unit of a particular denomination of a church or of a convention or association of churches; and

(C) a national membership organization and any of its State or local membership organizations or units, a national trade association and any of its State or local trade associations, a national business league and any of its State or local business leagues, a national federation of labor organizations and any of its State or local federations, and a national labor organization and any of its State or local labor organizations;

(2) the term "Comptroller General" means the Comptroller General of the United States;

(3) the term "direct business relationship" means the relationship between an organization and any Federal officer or employee in which—

(A) such Federal officer or employee is a partner in such organization;

(B) such Federal officer or employee is a member of the board of directors or similar governing body of such organization, or is an officer or employee of such organization; or

(C) such organization and such Federal officer or employee each hold a legal or beneficial interest (excluding stock holdings in publicly traded corporations, policies of insurance, and commercially reasonable leases made in the ordinary course of business) in the same business or joint venture, and the value of each such interest exceeds $1,000;

(4) the term "employ" means the utilization of the services of an individual or organization in consideration of the payment of money or other thing of value, but does not include the utilization of the services of a volunteer;

(5) the term "exempt travel expenses" means any sum expended by any organization in payment or reimbursement of the cost of any transportation for any agent, employee, or other person (but not including a Federal officer or employee) engaging in activities described in section 3(a), plus such amount of any sum received by such agent, employee, or other person as a per diem allowance for each such day as is not in

excess of the maximum applicable allowance payable under section 5702(a) of title 5, United States Code, to Federal employees subject to such section;

(6) the term "expenditure" means—

(A) a payment, distribution (other than normal dividends and interest), salary, loan (if made on terms or conditions that are more favorable than those available to the general public), advance, deposit, or gift of money or other thing of value, other than exempt travel expenses, made—

(i) to or for the benefit of a Federal officer or employee;

(ii) for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a), and for costs attributable partly to activities described in section 3(a) where such costs, with reasonable preciseness and ease, may be directly allocated to those activities; or

(iii) for the retention or employment of an individual or organization who makes lobbying communications on behalf of the organization; or

(B) a contract, promise, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparagraph (A);

(7) the term "Federal officer or employee" means—

(A) any Member of the Senate or the House of Representatives, any Delegate to the House of Representatives, and the Resident Commissioner in the House of Representatives;

(B) any officer or employee of the Senate or the House of Representatives or any employee of any Member, committee, or officer of the Congress;

(C) any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code; and

(D) the Comptroller General, Deputy Comptroller General, General Counsel of the United States General Accounting Office, and any officer or employee of the United States General Accounting Office whose compensation is fixed by the Comptroller General in accordance with section 203(i) of the Federal Legislative Salary Act of 1964 (31 U.S.C. 52b);

(8) the term "identification" means—

(A) in the case of an individual, the name, occupation, and business address of the individual and the position held in such business; and

(B) in the case of an organization, the name and address of the organization, the principal place of business of the organization, the nature of its business or activities, and the names of the executive officers and the directors of the organization, regardless of whether such officers or directors are paid;

(9) the term "lobbying communication" means, with respect to a Federal officer or employee described in section 2(7) (A) or (B), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, treaty, nomination, hearing, report, or investigation, and, with respect to a Federal officer or employee described in section 2(7) (C) or (D), an oral or written communication directed to such Federal officer or employee to influence the content or disposition of any bill, resolution, or treaty which has been transmitted to or introduced in either House of Congress or any report thereon of a committee of Congress, any nomination to be submitted or submitted to the Senate, or

any hearing or investigation being conducted by the Congress or any committee or subcommittee thereof, but does not include—

(A) a communication made at the request of a Federal officer or employee, or submitted for inclusion in a report of a hearing or in the record or public file of a hearing;

(B) a communication made through a speech or address, through a newspaper, book, periodical, or magazine published for distribution to the general public, or through a radio or television transmission, or through a regular publication of an organization published in substantial part for purposes unrelated to engaging in activities described in section 3(a); except that this exemption shall not apply to an organization responsible for the purchase of a paid advertisement in a newspaper, magazine, book, periodical, or other publication distributed to the general public, or of a paid radio or television advertisement;

(C) a communication by an individual for a redress of grievances, or to express his personal opinion;

(D) a communication on any subject directly affecting an organization to (i) a Senator, or to an

individual on his personal staff, if such organization's principal place of business is located in the State represented by such Senator, or (ii) a Member of the House of Representatives, or to an individual on his personal staff, if such organization's principal place of business is located in a county (including a city, city-and-county, parish, and the State of Alaska) within which all or part of such Member's congressional district is located; or

(E) a communication which deals only with the existence or status of any issue, or which seeks only to determine the subject matter of an issue;

(10) the term "organization" means—

(A) any corporation (excluding a Government corporation), company, foundation, association, labor organization, firm, partnership, society, joint stock company, organization of State or local elected or appointed officials (excluding any Federal, State, or local unit of government other than a State college or university as described in section 511(a)(2)(B) of the Internal Revenue Code of 1954, and excluding any Indian tribe, any national or State political party and any organizational

unit thereof, and any association comprised solely of Members of Congress or Members of Congress and congressional employees), group of organizations, or group of individuals; and

(B) any agent of a foreign principal as defined in section 1 of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611);

(11) the term "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1; and

(12) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

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SEC. 3. (a) The provisions of this Act shall apply to—

(1) any organization which makes an expenditure in excess of $2,500 in any quarterly filing period for the retention of an individual or another organization to make lobbying communications, or for the express purpose of preparing or drafting any such lobbying communication; or

(2) any organization which (A) employs one or more individuals who, on all or part of each of thirteen days or more, in the aggregate, in any quarterly filing

period, make lobbying communications on behalf of that organization, and (B) makes an expenditure in excess of $2,500 in such quarterly filing period on making lobbying communications,

except that the provisions of section 4 and section 6 of this Act shall not apply to an affiliate of a registered organization if such affiliate engages in activities described in paragraphs (1) and (2) of this subsection and such activities are reported by the registered organization.

(b) This Act shall not apply to practices or activities regulated by the Federal Election Campaign Act of 1971.

REGISTRATION

SEC. 4. (a) Each organization shall register with the Comptroller General not later than thirty days after engaging in activities described in section 3(a).

(b) The registration shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization, except that nothing in this paragraph shall be construed to require the disclosure of the identity of the members of an organization.

(2) An identification of any retained individual or organization described in section 3(a)(1) (hereinafter in this Act referred to as a "retainee"), and of any employee described in section 3(a)(2).

(c) A registration filed under subsection (a) in any calendar year shall be effective until January 15 of the succeeding calendar year. Each organization required to register under subsection (a) shall file a new registration under such subsection within fifteen days after the expiration of the previous registration, unless such organization notifies the Comptroller General, under subsection (d), with respect to terminating the registration of the organization.

(d) Any registered organization which determines that it will no longer engage in activities described in section 3(a) shall so notify the Comptroller General. Such organization shall submit with such notification either (1) a final report, containing the information specified in section 6(b), concerning any activities described in section 3(a) which the organization has not previously reported, or (2) a statement, pursuant to section 6(a)(2), as the case may be. When the Comptroller General receives such notification and report or statement, the registration of such organization shall cease to be effective.

RECORDS

SEC. 5. (a) Each organization required to be registered and each retainee of such organization shall maintain for each quarterly filing period such records as may be necessary to enable such organization to file the registrations and reports required to be filed under this Act, except that, in those

situations where a registered organization elects to report as to the lobbying activities of its affiliates pursuant to section 3(a), such affiliates shall be responsible for maintaining such records as are necessary to enable the registered organization to fully discharge its reporting obligations as they pertain to such affiliates. The Comptroller General may not by rule or regulation require an organization to maintain or establish records (other than those records normally maintained by the organization) for the purpose of enabling him to determine whether such organization is required to register.

(b) Any officer, director, employee, or retainee of any organization shall provide to such organization such information as may be necessary to enable such organization to comply with the recordkeeping and reporting requirements of this Act. Any organization which relies in good faith on the information provided by any such officer, director, employee, or retainee shall be deemed to have complied with subsection (a) with respect to that information.

(c) The records required by subsection (a) shall be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate.

REPORTS

SEC. 6. (a)(1) Each organization which engages in the activities described in section 3(a) during a quarterly filing period shall, not later than thirty days after the last day of

such period, file a report concerning such activities with the Comptroller General.

(2) Each registered organization which does not engage in the activities described in section 3(a) during a quarterly filing period shall file a statement to that effect with the Comptroller General.

(b) Each report required under subsection (a)(1) shall contain the following, which shall be regarded as material for the purposes of this Act:

(1) An identification of the organization filing such report.

(2) The total expenditures (excluding salaries other than those reported under paragraph (5) of this subsection) which such organization made with respect to activities described in section 3(a) during such period.

(3) An itemized listing of each expenditure in excess of $35 made to or for the benefit of any Federal officer or employee and an identification of such officer or employee.

(4) A disclosure of those expenditures for any reception, dinner, or other similar event which is paid for, in whole or in part, by the reporting organization and which is held for the benefit of any Federal officer or employee, regardless of the number of persons invit-

ed or in attendance, where the total cost to the reporting organization of the event exceeds $500.

(5) An identification of any retainee of the organization filing such report and of any employee who makes lobbying communications on all or part of each of seven days or more, and the expenditures made pursuant to such retention or employment, except that in reporting expenditures for the retention or employment of any such individual or organization, the organization filing such report shall—

(A) allocate, in a manner acceptable to the Comptroller General, and disclose the amount which is paid to any such retainee or employee and which is attributable to engaging in such activities for the organization filing such report; or

(B) notwithstanding any other provision of this Act, disclose the total expenditures paid to any such retainee or employee by the organization filing such report.

(6) A description of the issues concerning which the organization filing such report engaged in lobbying communications and upon which the organization spent a significant amount of its efforts, disclosing with respect to each issue any retainee or employee identified in paragraph (5) of this subsection and the chief execu-

tive officer, whether paid or unpaid, who engaged in lobbying communications on behalf of that organization on that issue. However, in the event an organization has engaged in lobbying communications on more than fifteen issues, such organization shall be deemed to have complied with this subsection if it lists the fifteen issues on which it has spent the greatest proportion of its efforts. For purposes of this paragraph the term "chief executive officer" means the individual with primary responsibility for directing the organization's overall policies and activities.

(7) In the case of written solicitations, and solicitations made through paid advertisements, where such solicitations reached or could be reasonably expected to reach, in identical or similar form, five hundred or more persons, one hundred or more employees, twenty-five or more officers or directors, or twelve or more affiliates of such organization—

(A) a description of the issue with which the solicitation was concerned; except that the reporting organization may, in its own discretion solely, satisfy this requirement by filing a copy of the solicitation;

(B) a description of the means employed to make the solicitation and an indication of whether the recipients were in turn asked to solicit others;

(C) an identification of any individual or organization retained to make the solicitation;

(D) if the solicitation is conducted through the mails or by telegram, the approximate number of persons directly solicited; and

(E) if the solicitation is conducted through a paid advertisement and the total amount expended exceeds $5,000, an identification of the publication or radio or television station where the solicitation appeared and the total amount expended on any solicitation conducted through one or more such advertisements.

"For purposes of this paragraph, the term "solicitation" means any communication directly urging, requesting, or requiring another person to advocate a specific position on a particular issue and to seek to influence a Member of Congress with respect to such issue, but does not mean any such communication made by one organization registered under this Act to another organization registered under this Act.

(8) Disclosure of each known direct business relationship between the reporting organization and a Fed-

eral officer or employee whom such organization has sought to influence during the quarterly filing period involved.

(9) If any lobbying communication was made on the floor of the House of Representatives or adjoining rooms thereof, or on the floor of the Senate or adjoining rooms thereof, a statement that such lobbying communication was made.

(c) The report filed by an organization concerning activities during the fourth quarter of each calendar year shall also include a separate schedule listing the name and address of each organization from which the reporting organization received an aggregate of $3,000 or more in dues or contributions during that calendar year and listing the amount given, where (1) the dues or contributions were expended in whole or in part by the reporting organization for lobbying communications and solicitations and (2) the total expenditures reported by the reporting organization under subsections (b)(2) and (b)(7) of this section during that calendar year exceed 1 per centum of the total annual income of the organization; except that the reporting organization may, if it so chooses, instead of listing the specific amount received, state the amount in the following categories:

(A) Amounts equal to or exceeding $3,000, but less than $10,000.

(B) Amounts equal to or exceeding $10,000, but less than $25,000.

(C) Amounts equal to or exceeding $25,000, but less than $50,000.

(D) Amounts equal to or exceeding $50,000.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 7. (a) It shall be the duty of the Comptroller General—

(1) to develop filing, coding, and cross-indexing systems to carry out the purposes of this Act, including (A) a cross-indexing system which, for any retainee who is identified in any registration or report filed under this Act, discloses each organization identifying such retainee in any such registration or report, and (B) a cross-indexing system, to be developed in cooperation with the Federal Election Commission, which discloses for any such retainee each identification of such retainee in any report filed under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(2) to make copies of each registration and report filed with him under this Act available for public inspection and copying, commencing as soon as practicable after the date on which the registration or report involved is received, but not later than the end of the

fifth working day following such date, and to permit copying of such registration or report by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; except that no information contained in any such registration or report shall be sold or utilized by any individual or organization for the purpose of soliciting contributions or business;

(3) to preserve the originals or accurate reproductions of such registrations and reports for a period of not less than five years from the date on which the registration or report is received;

(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

(5) to make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to permit copying of such information by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of such in-

formation upon payment of the cost of making and furnishing such copy;

(6) to prescribe such rules and regulations and such forms as may be necessary to carry out the provisions of this Act in an effective and efficient manner; and

(7) to refer to the Attorney General all apparent violations of any provisions of this Act, or any rule or regulation promulgated pursuant to this Act.

(b) The Comptroller General shall carry out the duties described in subsection (a)(6) of this section in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code, and any records maintained by the Comptroller General under this Act shall be subject to the provisions of sections 552 and 552a of such title.

ENFORCEMENT

SEC. 8. (a) It shall be the duty of the Attorney General to investigate alleged violations of any provision of this Act, or any rule or regulation promulgated pursuant to this Act. The Attorney General shall notify the alleged violator of such alleged violation, unless the Attorney General determines that such notice would interfere with the effective enforcement of this Act, and shall make such investigation of such alleged violation as the Attorney General considers appropriate. Any such investigation shall be conducted expedi-

tiously and with due regard for the rights and privacy of the individual or organization involved.

(b) If the Attorney General determines, after any investigation conducted pursuant to subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a civil violation of this Act as described in section 11(a), he shall endeavor to correct such violation by informal methods of conference or conciliation.

(c) If the informal methods described in subsection (b) fail, the Attorney General may institute a civil action, including an action for a permanent or temporary injunction, restraining order, or any other appropriate relief, in the United States district court for the judicial district in which such individual or organization is found, resides, or transacts business.

(d) If the Attorney General determines, after any investigation under subsection (a), that there is reason to believe that any individual or organization has engaged in any act or practice which constitutes a criminal violation of this Act as described in section 11(b) or 11(c), the Attorney General may institute criminal proceedings in a United States district court in accordance with the provisions of chapter 211 of title 18, United States Code.

46-350 O - 79 - 33

(e) The United States district courts shall have jurisdiction of actions brought under this Act.

(f) In any civil action brought under subsection (c), the court may award to the prevailing party (other than the United States or an agency or official thereof) reasonable attorney fees and expenses if the court determines that the action was brought without foundation, vexatiously, frivolously, or in bad faith.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 9. The Comptroller General shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out his duties and functions under this Act, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF RULES OR REGULATIONS

SEC. 10. (a) Upon promulgation of any rule or regulation to carry out the provisions of section 4, 5, or 6 pursuant to section 7(a)(6) of this Act, the Comptroller General shall transmit notice of such rule or regulation to the Congress. The Comptroller General may place such rule or regulation in effect as proposed at any time after the expiration of

ninety calendar days of continuous session after the date on which such notice is transmitted to the Congress unless, before the expiration of such ninety days, either House of the Congress adopts a resolution disapproving such rule or regulation.

(b) For purposes of this section—

(1) continuity of session of the Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety calendar days referred to in subsection (a).

SANCTIONS

SEC. 11. (a) Any individual or organization knowingly violating section 4, 5, or 6 of this Act, or any rule or regulation promulgated pursuant to this Act, shall be subject to a civil penalty of not more than $10,000 for each such violation.

(b) Any individual or organization who knowingly and willfully violates section 4, 5, or 6 of this Act, or who, in any statement required to be filed, furnished, or maintained pursuant to this Act, knowingly and willfully makes any false statement of a material fact, omits any material fact required to be disclosed, or omits any material fact necessary to make

statements made not misleading, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, for each such violation.

(c) Any individual or organization knowingly and willfully failing to provide or falsifying all or part of any records required to be furnished to an employing or retaining organization in violation of section 5(b) shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(d) Any individual or organization selling or utilizing information contained in any registration or report in violation of section 7(a)(2) of this Act shall be subject to a civil penalty of not more than $10,000.

REPEAL OF THE FEDERAL REGULATION OF LOBBYING ACT

SEC. 12. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof, are hereby repealed.

SEPARABILITY

SEC. 13. If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. There are authorized to be appropriated to carry out this Act $1,600,000 for the fiscal year beginning

on October 1, 1979; $1,600,000 for the fiscal year beginning on October 1, 1980; and $1,600,000 for the fiscal year beginning on October 1, 1981.

EFFECTIVE DATES

SEC. 15. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on October 1, 1979.

(b) Sections 4, 5, 6, 8, 11, and 12 shall take effect on the first day of the first calendar quarter beginning after the date on which the first rules and regulations promulgated to carry out the provisions of sections 4, 5, and 6 take effect, in accordance with section 10.

96TH CONGRESS
1ST SESSION

H. R. 2613

To regulate lobbying and related activities.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1979

Mr. YOUNG of Florida introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To regulate lobbying and related activities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Disclosure of Lobbying Act of 1979".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "affiliate" means—

(A) organizations which are associated with each other through a formal relationship based upon ownership or an agreement (including a

charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organizations;

(B) units of a particular denomination of a church or of a convention or association of churches; and

(C) national membership organizations and their State and local membership organizations or units, national trade associations and their State and local trde associations, national business leagues and their State and local business leagues, national federations of labor organizations and their State and local federations, and national labor organizations and their State and local labor organizations.

(2) The term "Comptroller General" means the Comptroller General of the United States.

(3) The term "direct business contact" means any relationship between an organization and any Federal officer or employee in which—

(A) such Federal officer or employee is a partner in such organization;

(B) such Federal officer or employee is a member of the board of directors or similar governing body of such organization, or is an officer or employee of such organization; or

(C) such organization and such Federal officer or employee each hold a legal or beneficial interest (exclusive of stock holdings in publicly traded corporations, policies of insurance, and commercially reasonable leases made in the ordinary course of business) in the same business or joint venture, and the value of each such interest exceeds $1,000.

(4) The term "exempt travel expenses" means any sum expended by any organization in payment or reimbursement of the cost of any transportation for any agent, employee, or other person engaging in activities described in section 3 (a), plus such amount of any sum received by such agent, employee, or other person as a per diem allowance for each such day as is not in excess of the maximum applicable allowance payable under section 5702(a) of title 5, United States Code, to Federal employees subject to such section.

(5) The term "expenditure" means—

(A) a payment, distribution (other than normal dividends and interest), salary, loan, ad-

vance, deposit, or gift of money or other thing of value, other than exempt travel expenses, made—

(i) to a Federal officer or employee; or

(ii) for mailing, printing, advertising, telephones, consultant fees, or the like which are attributable to activities described in section 3(a), and for costs attributable partly to activities described in section 3(a) where such costs, with reasonable preciseness and ease, may be directly allocated to those activities; or

(B) a contract, promise, or agreement, whether or not legally enforceable, to make, disburse, or furnish any item referred to in subparagraph (A).

(6) The term "Federal officer or employee" means—

(A) any Member of the Senate or the House or Representatives, any Delegate to the House of Representatives, and the Resident Commissioner in the House of Representatives;

(B) any officer or employee of the Senate or the House of Representatives or any employee of any Member, committee, or officer of the Congress; and

(C) any officer of the executive branch of the Government listed in sections 5312 through 5316 of title 5, United States Code.

(7) The term "identification" means—

(A) in the case of an individual, the name, occupation, and business address of the individual and the position held in such business; and

(B) in the case of an organization, the name and address of the organization, the principal place of business of the organization, the nature of its business or activities, and the names of the executive officers and the directors of the organization, regardless of whether such officers or directors are paid.

(8) The term "organization" includes any corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, national organization of State or local elected or appointed officials (excluding any national or State political party and any organizational unit thereof, and excluding any association comprised solely of Members of Congress or Members of Congress and congressional employees), group of organizations, or group of individuals, which had paid officers, directors, or employees,

and includes a State or local government or agency thereof.

(9) The term "quarterly filing period" means any calendar quarter beginning on January 1, April 1, July 1, or October 1.

(10) The term "solicitation" means any oral or written communication directly urging, requesting, or requiring another person to advocate a specific position on a particular issue and to seek to influence a Federal officer or employee with respect to such issue, but does not mean such oral or written communications by one organization registered under this Act to another organization registered under this Act.

(11) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

APPLICABILITY OF ACT

SEC. 3. (a) The provisions of this Act shall apply to any organization which—

(1) makes an expenditure in excess of $1,250 in any quarterly filing period for the retention of another person to make oral or written communications directed to a Federal officer or employee to influence the content or disposition of any bill, resolution, treaty,

nomination, hearing, report, investigation (excluding civil or criminal investigations or prosecutions by the Attorney General and any investigation by the Comptroller General authorized by the provisions of this Act), rule (as defined in section 551(4) of title 5, United States Code), rulemaking (as defined in section 551(5) of title 5, United States Code) or the award of Government contracts (excluding the submission of bids), or for the express purpose of preparing or drafting any such oral or written communication; or

(2) employs at least one individual who spends 20 percent of his time or more in any quarterly filing period engaged on behalf of that organization in those activities described in paragraph (1),

except that this Act shall not apply to an affiliate of a registered organization if such affiliate engages in activities described in paragraphs (1) and (2) of this subsection and such activities are reported by the registered organization.

(b) This Act shall not apply to—

(1) a communication (A) made at the request of a Federal officer or employee, (B) submitted for inclusion in a report or in response to a published notice of opportunity to comment on a proposed agency action, or (C) submitted for inclusion in the record, public docket, or public file of a hearing or agency proceeding;

(2) a communication or solicitation made through a speech or address, through a newspaper, book, periodical, or magazine published for distribution to the general public, or through a radio or television broadcast, or through a regular publication of voluntary membership organization published in substantial part for purposes unrelated to engaging in activities described in paragraphs (1) and (2) of subsection 3(a): *Provided*, That this exemption shall not apply to an organization responsible for the purchase of a paid advertisement in a newspaper, magazine, book, periodical, or other publication distributed to the general public, or of a paid radio or television advertisement;

(3) a communication by an individual, acting solely on his own behalf, for redress of his personal grievances, or to express his personal opinion;

(4) practices or activities regulated by the Federal Election Campaign Act of 1971;

(5) a communication on any subject directly affecting any organization to a Member of the Senate or of the House of Representatives, or to an individual on the personal staff of such Member, if such organization's principal place of business is located in the State, or in the congressional district within the State, represented by such Member, so long as (A) that orga-

nization acts (i) on its own initiative and not at the suggestion, request, or direction of any other person, or (ii) in response to a communication or solicitation described in paragraph (2), and (B) the expenditures made therefor are not paid by any other person; or

(6) activities of the National Academy of Sciences conducted under section 3 of the Act of March 3, 1863 (36 U.S.C. 253).

REGISTRATION

SEC. 4 (a) Each organization shall register with the Comptroller General not later than fifteen days after engaging in activities described in section 3(a).

(b) The registration shall be in such form as the Comptroller General shall prescribe by regulation, and shall contain the following, which shall be regarded as material for the purpose of this Act—

(1) an identification of the organization and a general description of the methods by which such organization arrives at its position with respect to any issue, except that nothing in this paragraph shall be construed to require the disclosure of the identity of the members of an organization;

(2) an identification of any person retained under section 3(a)(1) and of any employees described in section 3(a)(2); and

(3) an identification of any individual who has contributed $2,500 to the organization or an affiliate during any calendar year and who spends or will spend 20 percent or more of his time engaged in lobbying activities described in section 3(a) on behalf of that organization.

(c) A registration filed under subsection (a) in any calendar year shall be effective until January 15 of the succeeding calendar year. Each organization required to register under subsection (a) shall file a new registration under such subsection within fifteen days after the expiration of the previous registration, unless such organization has ceased to engage in activities described in section 3(a).

RECORDS

SEC. 5. (a) Each organization required to be registered and each person retained by such organization shall maintain such records for each quarter filing period as may be necessary to enable such organization to file the registrations and reports required to be filed under this Act. Such records shall be maintained in accordance with regulations prescribed by the Comptroller General. Any officer, director, employee, contributor, or retained person of any organization shall provide to such organization such information as may be necessary to enable such organization to comply with the record-keeping and reporting requirements of this Act. Any organi-

zation which shall rely in good faith on the information provided by any such officer, director, employee, or retained person shall be deemed to have complied with this subsection.

(b) The records required by subsection (a) shall be preserved for a period of not less than five years after the close of the quarterly filing period to which such records relate.

REPORTS

SEC. 6. (a) Each organization shall, not later than thirty days after the last day of each quarterly filing period, file a report with the Comptroller General concerning any activities described in section 3(a) which are engaged in by such organization during such period. Each such report shall be in such form as the Comptroller General shall prescribe by regulation.

(b) Each report required under subsection (a) shall contain the following, which shall be regarded as material for the purposes of this Act—

(1) an identification of the organization filing such report;

(2) the total expenditures which such organization made with respect to activities described in section 3(a) during such period, including an itemized listing of each expenditure in excess of $25 made to or for the benefit of any Federal officer or employee and an iden-

tification of such officer or employee: *Provided,* That the Comptroller General shall refer to the Committee on Standards of Official Conduct for investigation of any expenditures by an organization reportable under this subsection to or for the benefit of any Federal officer or employee (under the jurisdiction of said committee) that exceed $100 in value in the aggregate in any calender year to determine if the receipt of such expenditure is an acceptance of a gift of substantial value, directly or indirectly, from an organization having a direct interest in legislation before the Congress as prohibited under the Rule of the House of Representatives; but such expenditures shall not include any contribution to a candidate as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(e)), or any loan made on terms and conditions that are no more favorable than those available to the general public;

(3) a disclosure of those expenditures for any reception, dinner, or other similar event paid for, in whole or in part, by the reporting organization for Federal officers or employees regardless of the number of persons invited or in attendance, where the total cost of the event exceeds $500;

(4) an identification of any person retained by the organization filing such report under section 3(a)(1) and of any employee described in section 3(a)(2) and the expenditures made pursuant to such retention or employment, and an identification of any contributor described in section 4(b)(3), except that in reporting expenditures for the employment or retention of such persons, the organization filing such report shall—

(A) allocate, in a manner acceptable to the Comptroller General, and disclose that portion of the retained or employed person's income which is paid by the reporting organization and which is attributable to engaging in such activities for the organization filing such report; or

(B) notwithstanding any other provision of law, any retained or employed person by the organization filing such report;

(5) an identification of any officer, employee, or agent of the organization who engaged in a lobbying activity described in section 3(a) within one hundred feet of the Chamber of the House of Representatives or the Senate during a quarterly filing period and a statement of the date, time, and subject matter of such activity;

(6) a description of the primary issues concerning which the organization filing such report engaged in activities described in section 3(a) and upon which the organization spent a significant amount of its efforts;

(7) a description of solicitations made or paid for by such organization, and the subject matter with which such solicitations were concerned, where such solicitations reached or could be reasonably expected to reach, in identical or similar form, five hundred or more persons, or twenty-five or more officers or directors, one hundred or more employees, or twelve or more affiliates of such organization, except that this paragraph may be satisfied, with respect to a written solicitation, at the discretion of the reporting organization, by filing a copy of such solicitation;

(8) disclosure of each known direct business contact by the organization involved with a Federal officer or employee whom such organization has sought to influence during the quarterly filing period involved;

(9) an identification of—

(A) each organization from which the reporting organization received income during such period, including the amount of income provided by the organization, where the income was expended in whole or in part to engage in activities

described in section 3(a), if the amount of income received from the organization has totaled $2,500 or more in amount or value during the calendar year; and

(B) each individual from whom the reporting organization received income during such period, including the amount of income provided by the individual, where the income was expended in whole or part to engage in activities described in section 3(a), if the amount of income received from the individual and his immediate family has totaled $2,500 or more in amount or value during the calendar year. This paragraph shall not apply to any income received by the organization in the form of a return on an investment by the organization or a return on the capital of the organization; and

(10) a list of the names of each Federal officer or employee contacted by the organization in the course of any lobbying activity described in section 3(a).

As used in paragraph (9), the term "income" means a gift, donation, contribution, payment, loan, advance, service, salary, or other thing of value received, and a contract, promise, or agreement, whether or not legally enforceable, to receive any such item, but does not include the value of any

voluntary services provided by individuals without compensation from the organization.

(c) If an organization which is required to register under this Act directs an affiliate which is not required to register to engage in a solicitation relating to an issue with respect to which such organization is engaging in any activity described in section 3(a), or reimburses such an affiliate for expenses incurred in such a solicitation, then such organization must report such solicitation as if it were initiated, or paid for, by such organization.

LIMITATIONS ON LOBBYING IN AREAS PROXIMATE TO THE HOUSE OR SENATE CHAMBERS

SEC. 7. (a) No officer, employee, agent, or other representative of an organization required to register under section 4 shall engage in any lobbying activity described in section 3(a) on any legislative matter within fifty feet of either Chamber of the Congress.

(b) Any officer, employee, agent, or other representative of an organization required to register under section 4 who engages in any lobbying activity described in section 3(a) on any legislative matter within one hundred feet of either Chamber of the Congress shall prominently display on his or her person a name tag, stating in clear print of not less than twenty-four point type his or her full name and the organization he or she represents.

(c) No person who is—

(1) an ex-Member of the House of Representatives;

(2) a former Parliamentarian of the House; or

(3) a former elected officer or minority employee of the House,

shall, in violation of rule XXXII of the Rules of the House of Representatives, appear in the Hall of the House or adjacent rooms as a representative of an organization which is required to register under this Act.

POWERS OF COMPTROLLER GENERAL

SEC. 8. (a) The Comptroller General, in carrying out the provisions of this Act, is authorized—

(1) to informally request or to require by subpena any individual or organization to submit in writing such reports, records, correspondence, and answers to questions as the Comptroller General may consider necessary to carry out the provisions of this Act, within such reasonable period of time and under oath or such other conditions as the Comptroller General may require;

(2) to administer oaths or affirmations;

(3) to require by subpena the attendance and testimony of witnesses and the production of documentary evidence;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person designated by the Comptroller General who has the power to administer oaths and to compel testimony and the production of evidence in any such proceeding or investigation in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States; and

(6) to petition any United States district court having jurisdiction for an order to enforce subpenas issued pursuant to paragraphs (1), (3), and (4) of this subsection.

(b) No individual or organization shall be civilly liable in any private suit brought by any other person for disclosing information at the request of the Comptroller General under this Act.

DUTIES OF THE COMPTROLLER GENERAL

SEC. 9. (a) It shall be the duty of the Comptroller General—

(1) to develop filing, coding, and cross-indexing systems to carry out the purposes of this Act, including (A) a cross-indexing system which, for any person identified in any registration or report filed under this

Act, discloses each organization identifying such person in any such registration or report, and (B) a cross-indexing system, to be developed in cooperation with the Federal Election Commission, which discloses for any such person each identification of such person in any report filed under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(2) to make copies of each registration and report filed with him under this Act available for public inspection and copying, commencing as soon as practicable after the date on which the registration or report involved is received, but not later than the end of the fifth working day following such date, and to permit copying of such registration or report by hand or by copying machine or, at the request of any individual or organization, to furnish a copy of any such registration or report upon payment of the cost of making and furnishing such copy; but no information contained in any such registration or report shall be sold or utilized by any individual or organization for the purpose of soliciting contributions or business;

(3) to preserve the originals or accurate reproductions of such registrations and reports for a period of not less than five years from the date on which the registration or report is received;

(4) to compile and summarize, with respect to each quarterly filing period, the information contained in registrations and reports filed during such period in a manner which clearly presents the extent and nature of the activities described in section 3(a) which are engaged in during such period;

(5) to make the information compiled and summarized under paragraph (4) available to the public within sixty days after the close of each quarterly filing period, and to publish such information in the Federal Register at the earliest practicable opportunity;

(6) to conduct investigations with respect to any registration or report filed under this Act, with respect to alleged failures to file any registration or report required under this Act, and with respect to alleged violations of any provision of this Act; and

(7) to prescribe such procedural rules and regulations, and such forms as may be necessary to carry out the provisions of this Act in an effective and efficient manner.

(b) For purposes of this Act, the duties of the Comptroller General described in subsections (a)(6) and (a)(7) of this section shall be carried out in conformity with chapter 5 of title 5, United States Code, and any records maintained by

the Comptroller General under this Act shall be subject to the provisions of sections 552 and 552a of title 5.

ADVISORY OPINIONS

SEC. 10. (a) Upon written request to the Comptroller General by any individual or organization, the Comptroller General shall, within a reasonable time, render a written advisory opinion with respect to the applicability of the record-keeping, registration, or reporting requirements of this Act to any specific set of facts involving such individual or organization, or other individuals or organizations similarly situated.

(b) Notwithstanding any other provision of law, any individual or organization with respect to whom an advisory opinion is rendered under subsection (a) who acts in good faith in accordance with provisions and findings of such advisory opinion shall be presumed to be in compliance with the provisions of this Act to which such advisory opinion relates. The Comptroller General may modify or revoke any such advisory opinion, but any modification or revocation shall be effective only with respect to action taken after such individual or organization has been notified, in writing, of such modification or revocation.

(c) All requests for advisory opinions, all advisory opinions, and all modifications or revocations of advisory opinions shall be published by the Comptroller General in the Federal Register.

(d) The Comptroller General shall, before rendering an advisory opinion under this section, provide any interested individual or organization with an opportunity, within such reasonable period of time as the Comptroller General may provide, to transmit written comments to the Comptroller General with respect to such advisory opinion.

(e) Any individual or organization who has received and is aggrieved by any advisory opinion from the Comptroller General may file a declaratory action in the United States district court for the district in which such individual resides or such organization maintains its principal place of business.

ENFORCEMENT

SEC. 11. (a) If the Comptroller General has reason to believe that any individual or organization has violated any provision of this Act, the Comptroller General shall notify such individual or organization of such apparent violation, unless the Comptroller General determines that such notice would interfere with effective enforcement of this Act, and shall make such investigaion of such apparent violation as the Comptroller General considers appropriate. Any such investigation shall be conducted expeditiously, and with due regard for the rights and privacy of the individual or organization involved.

(b) If the Comptroller General determines, after any investigation under subsection (a), that there is reason to be-

lieve that any individual or organization has engaged in any acts or practices which constitute a civil violation of this Act, he shall endeavor to correct such violation—

(1) by informal methods of conference or conciliation; or

(2) if such methods fail, by referring such apparent violation to the Attorney General.

(c) Upon a referral by the Comptroller General pursuant to subsection (b)(2), the Attorney General may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate relief in the United States district court for the district in which such individual or organization is found, resides, or transacts business. The Attorney General shall transmit a report to the Comptroller General describing any action taken by the Attorney General regarding the apparent violation involved.

(d) The Comptroller General shall refer apparent criminal violations of this Act to the Attorney General. In any case in which the Comptroller General refers such an apparent violation to the Attorney General, the Attorney General shall act upon such referral in as expeditious a manner as possible, and shall transmit a report to the Comptroller General describing any action taken by the Attorney General regarding such apparent violation.

(e) The reports required by subsections (c) and (d) shall be transmitted not later than sixty days after the date the Comptroller General refers the apparent violation involved, and at the close of every ninety-day period thereafter until there is final disposition of such apparent violation.

REPORTS BY THE COMPTROLLER GENERAL

SEC. 12. The Comptroller General shall transmit reports to the President of the United States and to each House of the Congress no later than March 31 of each year. Each such report shall contain a detailed statement with respect to the activities of the Comptroller General in carrying out his duties and functions under this Act, together with recommendations for such legislative or other action as the Comptroller General considers appropriate.

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 13. (a) Upon proposing to place any regulation in effect under section 4, 5, or 6, the Comptroller General shall transmit notice of such regulation to the Congress. The Comptroller General may place such regulation in effect as proposed at any time after the expiration of ninety calendar days of continuous session after the date on which such notice is transmitted to the Congress unless, before the expiration of such ninety days, either House of the Congress adopts a resolution disapproving such regulation.

(b) For purposes of this section—

(1) continuity of session of the Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety calendar days referred to in subsection (a).

SANCTIONS

SEC. 14. (a) Any individual or organization knowingly violating section 4, 5, 6, or 7 of this Act, or the regulations promulgated thereunder, shall be subject to a civil penalty of not more than $5,000 for each such violation.

(b) Any individual or organization who knowingly and willfully violates section 4, 5, 6, or 7 of this Act, or the regulations promulgated thereunder, or who, in any statement required to be filed, furnished, or maintained pursuant to this Act, knowingly and willfully makes any false statement of a material fact, omits any material fact required to be disclosed, or omits any material fact necessary to make statements made not misleading, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, for each such violation.

(c) Any individual or organization knowingly and willfully failing to provide or falsifying all or part of any records required to be furnished to an employing or retaining organi-

zation in violation of section 5(a) shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(d) Any individual or organization selling or utilizing information contained in any registration or report in violation of section 9(a)(2) of this Act shall be subject to a civil penalty of not more than $10,000.

REPEAL OF FEDERAL REGULATION OF LOBBYING ACT

SEC. 15. The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.), and that part of the table of contents of the Legislative Reorganization Act of 1946 which pertains to title III thereof, are repealed.

SEPARABILITY

SEC. 16. If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 17. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATES

SEC. 18. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of enactment.

(b) The authority of the Comptroller General to prescribe regulations under sections 4, 5, and 6 shall take effect

on the date of the enactment of this Act. The remaining provisions of sections 4, 5, and 6 and the provisions of sections 7, 11, 14, and 15 shall take effect on the first day of the first calendar quarter beginning after the date on which, in accordance with section 13, the first regulations so prescribed take effect.

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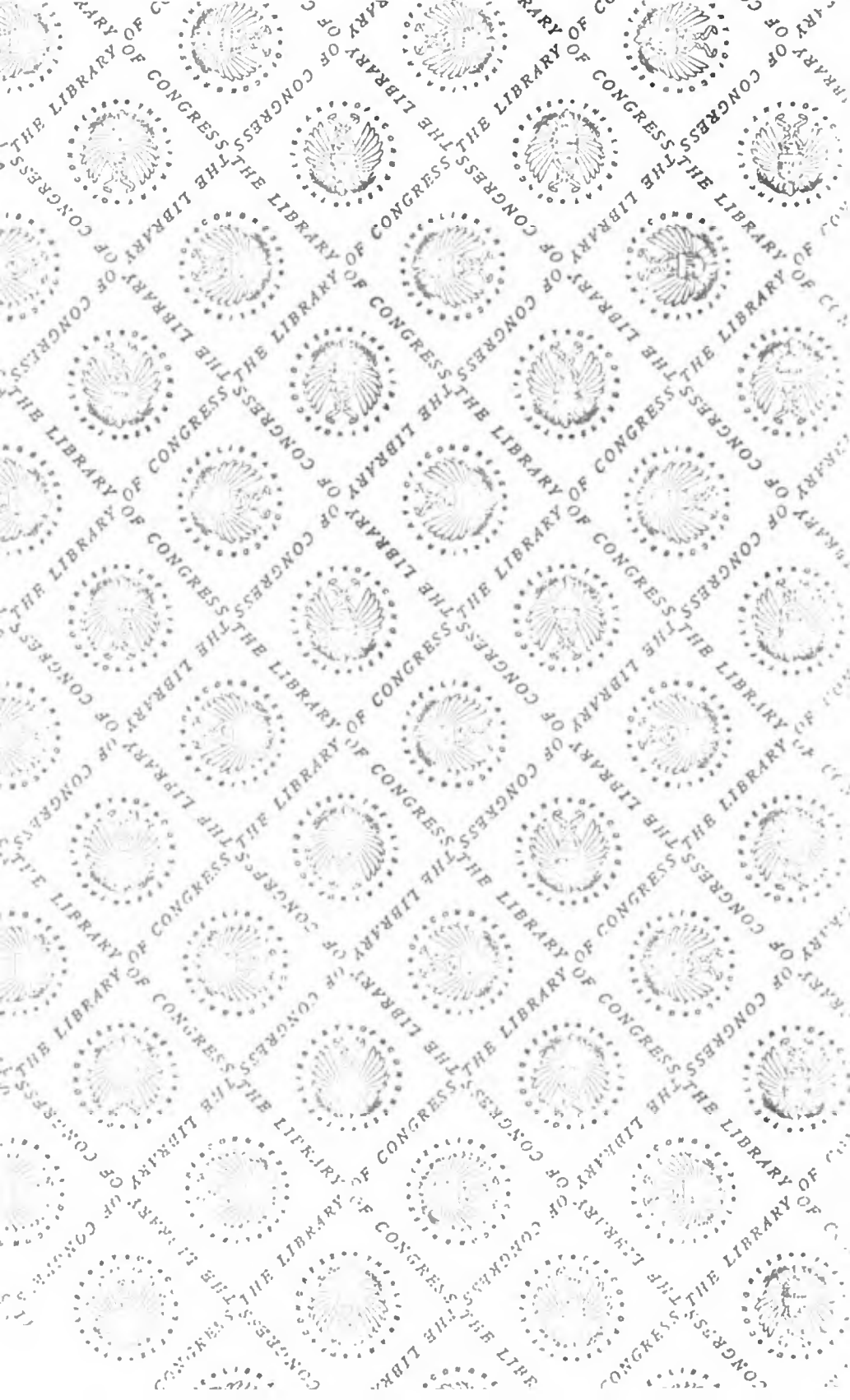
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